



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 3 सितम्बर, 2013 / 12 भाद्रपद, 1935

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 22nd August, 2013

No. Sharm (A) 7-1/2005-11 (Award) L-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No.	Case No.	Title of the Case	Date of Award
1.	148/2012	S/Shri Baldev VS E.E.HPPWD, J/Nagar.	11-06-2013
2.	125/2012	Dogri Ram V/s -do-	11-06-2013
3.	116/2012	Lachhi Devi V/S -do-	11-06-2013
4.	114/2012	Virender Kumar V/S -do-	11-06-2013
5.	149/2012	Gian Singh V/s -do-	11-06-2013
6.	112/2012	Dalip Singh V/s -do-	11-06-2013
7.	123/2012	Roshan Lal V/s -do-	11-06-2013
8.	111/2012	Nagender Singh V/s -do-	11-06-2013
9.	142/2012	Shanta Devi V/s -do-	11-06-2013
10.	140/2012	Gantu Ram V/s -do-	11-06-2013
11.	150/2012	Khel Singh V/s E.E. HPPWD, Killar	11-06-0213
12.	332/2012	Bhadri Devi V/s E.E. HPPWD J/Nagar	12-06-2013
13.	324/2012	Parvati Devi V/s -do-	12-06-2013
14.	322/2012	Nanki Devi V/s -do-	12-06-2013
15.	343/2012	Diwan Chand V/s -do-	12-06-2013
16.	368/2012	Gian Chand V/s -do-	12-06-2013
17.	103/2011	Jugal Kishore V/s D.F.O. Nurpur	15-6-2013
18.	373/2012	Pyar Chand V/s E.E. HPPWD, J/Nagar	12-06-2013
19.	369/2009	Sohan Lal V/s E.E. HPPWD Dharampur	20-06-2013
20.	152/2010	Asha Devi V/S -do-	20-06-2013
21.	259/2010	Bhuri Singh V/s G.M. Distt. Industries	20-6-2013
22.	311/2012	Hem Raj V/s E.E. HPPWD, Killer	21-06-2013
23.	70/2012	Rohit Kumar V/s M.D. Adinath Rubber	29-06-2013
24.	71/2012	Karnail Singh V/s -do-	29-06-2013
25.	279/2012	Rano Devi V/s -do-	29-06-2013
26.	181/2012	Arjun Singh V/s E.E. I&PH Padhar	01-07-2013
27.	186/2012	Santosh Kumar V/s -do-	01-07-2013
28.	184/2012	Krishan Kumar V/s -do-	01-07-2013
29.	188/2012	Piar Chand V/s -do-	01-07-2013
30.	161/2012	Om Prakash V/s -do-	01-07-2013
31.	210/20112	Rajiv Chand V/s Director Industries	01-07-2013
32.	157/2010	Desh Raj V/s E.E. HPPWD, Dharampur	02-07-2013
33.	99/2011	Prem Singh V/s -do-	02-07-2013
34.	237/2010	Vimla Devi V/s -do-	02-07-2013
35.	347/2012	Omkar Singh V/s E.E. HPPWD J/Nagar	03-07-2013
36.	385/2009	Safri V/s E.E. I&PH Dalhousie	03-07-2013
37.	371/2009	Chaman Singh V/s E.E. I&PH Dalhousie	03-07-2013
38.	05/2010	Rajinder Singh V/s -do-	03-07-2013
39.	403/2009	Karnail Singh V/s -do-	03-07-2013
40.	06/2010	Inder Singh V/s -do-	03-07-2013
41.	349/2009	Vikram Singh V/s -do-	03-07-2013
42.	484/2009	Kanshi Ram V/s -do-	03-07-0213
43.	401/2009	Karnail Singh V/s -do-	03-07-2013

44.	350/2009	Krishan Chand V/s -do-	03-07-2013
45.	384/2009	Chaman Singh V/s -do-	03-07-2013
46.	380/2012	Nanak Chand V/s E.E. HPPWD, J/Nagar	03-07-2013
47.	320/2012	Narinder Kumar V/s S.E. HPSEBL, Palampur	04-07-2013
48.	203/2012	Yadvinder Kumar V/s L.V Sharma	10-07-2013
49.	162/2012	Ramesh Chand V/s I&PH, Padhar	17-07-2013
50.	169/2012	Kali Dass V/s -do-	17-07-2013
51.	164/2012	Gopal Singh V/s -do-	17-07-2013
52.	163/2012	Inder Singh V/s -do-	17-7-2013
53.	170/2012	Ravinder Kumar V/s -do-	17-07-2013
54.	337/2012	Meena Devi V/s -do-	19-07-2013
55.	330/2012	Narvada Devi V/s -do-	19-07-2013
56.	328/2012	Maya Devi V/s -do-	19-07-2013
57.	336/2012	Urmila Devi V/s -do-	19-07-2013
58.	221/2012	Sher Singh V/s Director Kayakalp Palampur	29-07-2013

By order,
Sd/-

Pr. Secretary (Labour & Employment).

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 181/2012
Date of Institution : 02-3-2012
Date of Decision : 01-07-2013

Shri Arjun Singh s/o Shri Makholi Ram, r/o Village Manoh, P.O. Bassi, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, I.& P.H. Division, Padhar, District Mandi, H.P.

..Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Arjun Singh S/O Shri Makholi Ram, R/O Village Manoh, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 1997 to 2003 by the Executive Engineer, I.&P.H. Division, Padhar, District Mandi, H.P. without complying with the provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.7.1997. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2003. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2004 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anup Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.12.1997 to 31.12.2003, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2007. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 21.12.1997 to 31.12.2003 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2008 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.

- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad for non-joinder of the necessary party viz. the State of Himachal Pradesh. The claim petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on 01.7.1997. However, it has been denied that the fictional breaks were provided to the petitioner during the course of his employment. Continuous work for the entire months was provided to the petitioner for the period/years he has preferred the instant claim petition except the year 1999. During the year 1999 the work for 240 days was provided to him. The petitioner was an intermittent worker. He used to report for duty as per his convenience. In the year 2000, he did not work even for a single day. Despite the paucity of the funds, work for the whole month or more than 240 days was made available to the petitioner. As and when the petitioner reported for duty the muster roll was issued in his name. The petitioner is/was a defaulter. S/Sh. Anup Kumar and Om Prakash were engaged on 01.10.1999 and 01.10.2001. They worked intermittently from 01.10.1999 to 31.12.2001 and 01.10.2001 to 31.12.2002 respectively. From the years 2002 and 2003 onwards they are working for 240 days continuously. The services of S/Sh. Anup Kumar and Om Prakash have been regularized on 03.11.2010. The petitioner is working continuously from the year 2004. He completed eight years of continuous service on 31.3.2012 as per the policy of the State. His (petitioner's) case for regularization will be considered after the sanction is received from the prospective date. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner as he used to willfully remain absent from his duties and no fictional break was ever given to him. The policy framed/approved in Mool Raj Upadhaya's case does not apply to the case of the claimant/petitioner. As per the said policy one time benefit was given to the employees who had either completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 30th May, 2012 is applicable to the case of the petitioner. Under this policy the cut off date for considering an employee for regularization is 31.3.2012 on his completing eight years of continuous service with a minimum of 240 days in each and every calendar year. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date, the orders of regularization are issued on completion of the codal formalities and the sanction is received from the Government. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1997 to 2003 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Arjun Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to remain absent from duties willingly because of which he could not complete 240 days of work. He admitted that his services have already been regularized. He denied that he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 30th May, 2012 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged/contingent paid workers.

14. Exts. P-1 to P-33 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.7.1997. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No. 5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.7.1997. From 21.12.1997 to 20.12.1998, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days in a calendar year and remained absent from his duties. The petitioner did not work for a single day in the years 2000 and 2002. Ex. RW1/A also highlights that the petitioner did not work for a single day during the months of April, 2001 to July, 2001 despite the fact that the muster rolls for the entire months were issued in his name by the respondent/department. The petitioner cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or muster rolls for the whole month/year were not issued in the name of the petitioner or a line was wrongly drawn in the muster rolls showing that he (petitioner) has not reported for duty then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present. The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1997 to 2003. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. 384/2009

Date of Institution : 18.7.2009

Date of Decision : 03.07.2013

Shri Chaman Singh s/o Shri Udham Singh, r/o Village & P.O. Tikari, Tehsil Bhattiyat,
District Chamba, (H.P.) ..Petitioner.

Versus

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Chaman Singh S/O Shri Udham Singh by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba (H.P.) w.e.f. 09.11.2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of August, 1996 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was

not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of August, 1996. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 09.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Chaman Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 06.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 09.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 06.10.2000 worth Rs.3060/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 1996 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 09.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.174 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is August, 1996. There is nothing on the record to show that the deceased husbands of Smt.

Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are/were associates of the petitioner whose name is at serial No. 174 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

27. Not pressed

Relief (Issue No. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 09/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 371/2009

Date of Institution : 18.7.2009

Date of Decision : 03.07.2013

Shri Chaman Singh s/o Shri Kehar Singh, r/o Village Suned, P.O. Rajain, Tehsil Bhattiyat,
District Chamba, (H.P.) ..*Petitioner.*

Versus

The Executive Engineer, I& PH Division, Dalhousie, District Chamba, H.P.

..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Chaman Singh S/O Sh. Kehar Singh by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba (H.P.) w.e.f. 11/2000 after paying retrenchment compensation and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of September, 1994 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of September, 1994. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no

longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 16.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Chaman Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 12.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 16.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 12.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of September, 1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 16.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.338 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is September, 1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 414 and 435 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 338 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed

to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

27. Not pressed

Relief (Issue No. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 16/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 157/2010

Date of Institution : 20.5.2010

Date of Decision : 02.07.2013

Shri Desh Raj s/o Shri Tek Chand, r/o Village Thati, P.O. Kot, Tehsil Sarkaghat, District
Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, District
Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Desh Raj S/O Shri Tek Chand by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 09-02-04 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The case of the petitioner (as set out in the amended statement of claim/demand) is that his services were engaged as a daily rated beldar by the respondent on 01.7.1998. He continuously worked as such up-to 08.2.2004. On the next day i.e. 09.2.2004, his services were wrongly and illegally terminated by the respondent. He (petitioner) had completed 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date of his retrenchment. 1857 other workmen belonging to different categories were also terminated by the respondent w.e.f. 09.2.2004. Subsequently, a number of those workmen were re-engaged by the respondent. He (petitioner) was denied the opportunity of re-employment by the respondent for certain political reasons. At the time of his termination, the persons junior to him namely Sh. Shyam Singh and Sh. Vipin Kumar etc. were retained in service by the respondent. The juniors are still working with the respondent/department. Their services have also been regularized. The respondent failed to abide by the principle of ‘last come first go’. The work against which his (petitioner’s) services were engaged is/was of permanent nature. The same is still continuing. The respondent was having sufficient work and funds at the time of his retrenchment. On 08.7.2005, the respondent retrenched 1087 daily rated workmen once again. Such retrenchment has been held illegal by this Court. The Awards rendered by this Court have been upheld by the Hon’ble High Court of Himachal Pradesh in Civil Writ Petition No.1387/2010 titled as Executive Engineer, Dharampur Division, HPPWD Dharampur versus Nihal Chand, decided on 13.5.2010. The Hon’ble High Court has awarded Rs. 50,000/- to each and every retrenched workman. They have also been given the benefit of reinstatement and continuity in service. After the disengagement of his services, he (petitioner) tried his level best to secure the job, but in vain. He has no source of income. The act

and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). Demand notice dated 29.1.2009 was served upon the respondent by him, but in vain.

As such, he (petitioner) prays that the termination order dated 09.2.2004 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been taken to the effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court and is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.7.1998 and he worked continuously up-to 08.2.2004. The fact that the services of the petitioner were terminated w.e.f. 09.2.2004 stands admitted. It has not been specifically denied that the petitioner had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his retrenchment. However, it has been pleaded that the other retrenched workmen were re-engaged in the month of April, 2004. The petitioner failed to join his duties. Since the petitioner did not report for duty, the question of retaining the persons junior to him in service or violation of any provision of the Act does not arise. It has been admitted that 1087 daily rated workmen were retrenched on 08.7.2005 and the retrenchment orders have been set aside by the Court. It has been disputed that after his disengagement, the petitioner is not gainfully employed. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that in the month of April, 2004, he was not allowed to join his duties by the respondent for the reasons best known to him and certain political considerations.

5. Per order dated 28.10.2011, following issues were struck by my Id. Predecessor:—

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP.
2. Whether the termination of the petitioner is also violative of the provisions under Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR.
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Partly Yes, Partly No

Issue No. 3 : No

Issue No. 4 : Not pressed.

Relief. : Claim petition allowed vide operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Sh. Desh Raj stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He also admitted that his services were disengaged as the labour became surplus. He denied that no person junior to him was retained in service by the respondent. He admitted that when his services were dispensed with, he was paid the compensation under Section 25-F of the Act. He denied that he is not entitled to the re-employment etc.

10. Conversely, Shri Anil Sangrai, Executive Engineer, HPPWD Division, Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the persons junior to the petitioner were retained in service at the time of the disengagement of the services of the petitioner. He also denied that he has given a phoney statement.

11. Ex. PW1/B is the category-wise seniority list of all the daily waged workers working under B&R Division HPPWD, Dharampur, as on 07.7.2005.

12. Ex. RW1/A is the mandays chart relating to the petitioner.

13. Ex. RW1/B is the copy of the notice dated 23.1.2004 served upon the petitioner by the respondent under Section 25-F of the Act. Its perusal discloses that the services of the petitioner were terminated w.e.f. 09.2.2004 by the respondent on the ground of the paucity of the work and the funds.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar on 01.7.1998 and he continuously worked as such up-to 8.2.2004. Admittedly, the services of the petitioner were terminated w.e.f. 09.2.2004 per notice dated 23.1.2004 the copy of which is Ex. RW1/B.

15. As already mentioned, the respondent in his reply has not denied specifically that the petitioner had completed 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months anterior to the date of his retrenchment. The said fact also finds support from the mandays chart Ex. RW1/A pertaining to the petitioner and the admissions made by RW1.

16. Section 25-F of the Act postulates as under:

“25-F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

17. A glance of the notice Ex. RW1/B unfolds that the same is not in conformity with the provisions of the above quoted Section. One month notice of termination was not served upon the petitioner by the respondent before the disengagement of the former.

18. Moreover, from the seniority list Ex. PW1/B as it stood on 07.7.2005, it can be gathered that at the time of the termination of the services of the petitioner, the persons junior to him were serving the respondent/department. This indicates that the respondent failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-F and 25-G of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Otherwise too, it is an admitted fact that a number of workmen were removed from service by the respondent on 09.2.2004. Majority of them raised the industrial dispute. The claim petitions preferred by them were allowed by this Court. The Awards passed by this Court were upheld by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen disengaged by the respondent on 09.2.2004 and 08.7.2005, the Hon'ble High Court also directed the respondent to pay Rs.50,000/- in lieu of back wages and compensation etc. to each and every workman. To avoid the discrimination, the petitioner is also entitled to these reliefs.

19. These issues are decided in favour of the petitioner and against the respondent.

Issue No. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that “the

reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

21. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

22. Not pressed.

Relief (Issue No. 5)

23. As a sequel to my findings on the above issues, the instant claim petition succeeds and the same is allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity in service and seniority from the date of his illegal termination i.e. 09.2.2004. The petitioner is also held entitled to a lump sum amount of Rs.50,000/- in lieu of back wages and compensation etc. The respondent is directed to regularize the services of the petitioner as per the policies framed by the State Government from time to time. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 164/2012
Date of Institution : 02.3.2012
Date of Decision : 17.07.2013

Shri Gopal Singh s/o Shri Bhopat Ram, r/o Village Banai, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I.&P.H., Division, Padhar, Distt. Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Gopal Singh S/O Shri Bhopat Ram, Village Banai, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 2000 & 2001 by the Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P. without complying with the provisions of section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.09.2000. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.9.2000 to 31.12.2001, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2007 and ten years of continuous service on 31.12.2009. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2010 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.09.2000 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period

and counted the said period in continuity of service for the purpose of his regularization.

- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2010 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2010 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (vi) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (vii) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.09.2000. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 17.02.2012. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 2000 and 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 20th July, 2011 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2011 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 2000 & 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. The petitioner Shri Gopal Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 20th July, 2011 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers.

14. Exts. P-1 to P-14 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.9.2000. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

- (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.9.2000. From the date of his employment to 31.12.2002, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days in a calendar year and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him then why he did not agitate the said fact earlier or

at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 2000 & 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been

expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 6/2010

Date of Institution : 16.01.2010

Date of Decision : 03.07.2013

Shri Inder Singh s/o Shri Moti Ram, r/o Village Bhont, P.O. Garnota, Tehsil Bhattiyat,
District Chamba, (H.P.) *..Petitioner.*

Versus

The Executive Engineer, IPH Division Dalhousie, District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Inder Singh S/O Sh. Moti Ram by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, H.P. w.e.f. year, 2000 and

retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?"

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of October, 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, termination notices were prepared against him and the other workmen by the respondent. In the month of October 2000, his services were disengaged by the respondent without assigning any reason. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of 'last come first go' was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of November, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 01.09.2000, the principle of 'last come first go' was strictly adhered to. No notice under Section 25-F of the Act and the retrenchment compensation were required to be given to the petitioner since he did not complete 240 days of continuous service in a block of 12 calendar months preceding the date of his termination. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No

person junior to the petitioner has been retained in service or reengaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. Shri Inder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that the mandays chart (Ex. R1) produced by the respondent is correct. He does not know that in the month of October/November 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He denied that the termination notice was given to him by the respondent. He also denied that the retrenchment compensation was paid to him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

12. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

13. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

14. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of November, 1995 by the respondent.

16. It is an admitted fact that the services of the petitioner were disengaged by the respondent with effect from 01.09.2000. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.424 of the list.

17. The mandays chart Ex. R1 depicts that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination as envisaged under

Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

18. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is November, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. Not only this, Ex. RW1/K i.e. the mandays chart pertaining to Shri Sanjay Kumar and three other daily wagers clarifies that their services were engaged by the respondent in the year 2004 and thereafter i.e. after the disengagement of the services of the petitioner. There is nothing on the record to show that at the time of the appointment of Shri Sanjay Kumar and others, an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent.

20. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

22. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

23. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the

Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

24. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

25. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

26. Not pressed

Relief (Issue No. 6)

27. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 01/09/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA.
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 163/2012

Date of Institution : 02.3.2012

Date of Decision : 17.07.2013

Shri Inder Singh s/o Shri Chandu Ram, r/o Village Ner, P.O. Majharnoo, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I.&P.H., Division, Padhar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Inder Singh S/O Shri Chandu Ram, Village Ner, P.O. Majharnoo, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 1998 & 1999 by the Executive Engineer, I. &P.H. Division Padhar, Distt. Mandi, H.P. without complying with the provisions of Section 25-F,G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.04.1998. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.1999. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.5.1998 to 31.12.1999, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his

disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2006. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 01.05.1998 to 31.12.1999 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (viii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2007 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (ix) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (x) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.04.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 09.3.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 and 1999. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used

to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy, one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 9th September, 2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2008 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 & 1999 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Inder Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 9th September, 2008 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers.

14. Exts. P-1 to P-14 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.4.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (xii) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/

petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.4.1998. From 06.1.1999 to 30.11.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days in a calendar year and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 & 1999. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 169/2012

Date of Institution : 02.3.2012

Date of Decision : 17.07.2013

Shri Kali Dass s/o Shri Megh Singh, r/o Village Chatter, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I.&P.H., Division, Padhar, Distt. Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Kali Dass S/O Shri Megh Singh, Village Chatter, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 1999 to 2001 by the Executive Engineer, I.&P.H. Division Padhar, Distt. Mandi, H.P. without complying with the provisions of section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.01.1999. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 25.1.1999 to 31.12.2001, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his

disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2007. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 25.01.1999 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2008 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (xiii) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.01.1999. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1999 to 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used

to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Kali Dass stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers.

14. Exts. P-1 to P-32 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 06.1.1999. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the

employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.1.1999. From the date of his initial appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2001. However, he worked for less than 240 days in a calendar year and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 15 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1999 to 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 484/2009

Date of Institution : 20.11.2009

Date of Decision : 03.07.2013

Shri Kanshi Ram s/o Shri Chattar Singh, r/o Village Sunhar, P.O. Garnota, Tehsil Bhattiyat,
District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, IPH Division, Dalhousie, District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kanshi Ram S/O Sh. Chattar Singh by The Executive Engineer, IPH Division, Chamba, Distt. Chamba, H.P. w.e.f. Year, 2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of May, 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter

VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of May, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 09.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed
 Issue No. 5 : Not pressed
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. Shri Kanshi Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been re-engaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 06.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 09.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 06.10.2000 worth Rs.3060/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal

Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of May, 1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 09.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.382 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is May, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 414 and 435 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 382 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

27. Not pressed

Relief (Issue No. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 09/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room. Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 403/2009
Date of Institution : 18.7.2009
Date of Decision : 03.07.2013

Shri Karnail Singh s/o Shri Sant Ram, r/o Village Dharwai, P.O. Khargat, Sub Tehsil
Sihunta, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Karnail Singh S/O Shri Sant Ram by Executive Engineer, I.&P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 09-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of August, 1996 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the

labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of August, 1996. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 09.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.

2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. Shri Karnail Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He

admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.
11. Ext. R-2 is the copy of notice dated 06.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 09.11.2000 (afternoon) due to the non-availability of the work and the funds.
12. Ex. R-3 is the copy of counter foil of the cheque dated 06.10.2000 worth Rs.3060/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.
13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.
14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.
15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.
16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.
17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 1996 by the respondent.
18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 09.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.177 of the list.
19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is August, 1996. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are/were associates of the petitioner whose name is at serial No. 177 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

27. Not pressed

Relief (Issue No. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 09/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 401/2009
Date of Institution : 18.7.2009
Date of Decision : 03.07.2013

Shri Karnail Singh s/o Shri Chuha, r/o Village & P.O. Sihunta, Tehsil Bhattiyat, District
Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, I.& P.H. Division, Dalhousie, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Karnail Singh S/O Shri Chuha by the Executive Engineer, I.& P.H. Division Dalhousie, District Chamba, H.P. w.e.f. 19-11-2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of September, 1994 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of September, 1994. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 19.11.2000, the principle of ‘last come first go’ was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly

followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. Shri Karnail Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 17.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 19.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 17.10.2k worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged w.e.f. 12.09.1994 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 19.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of

the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.13 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is September, 1994. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 13 of Ex. RW1/D.

21. There is no denial of the fact that Reference No. 570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was

allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

27. Not pressed

Relief (Issue No. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 19/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 350/2009

Date of Institution : 23.5.2009

Date of Decision : 03.07.2013

Shri Krishan Chand s/o Shri Jagta Ram, r/o Village Charudi, P.O. Tikri, Tehsil Sihunta,
District Chamba, (H.P.) ..Petitioner.

Versus

The Executive Engineer, I& PH Division, Dalhousie, District Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Krishan Chand S/O Sh. Jagta Ram by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 2000 while retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of October, 1995 by the respondent. He worked as such up-to the month of October, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/freshhands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to reengage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority,

continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of October, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 13.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Krishan Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. The compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 09.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 13.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

13. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal

Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

14. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

15. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of October, 1995 by the respondent.

17. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 13.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.97 of the list.

18. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is October, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj is junior to the petitioner whose name is at serial No. 97 of Ex. RW1/D.

20. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000, new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

23. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving therelief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

24. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

25. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

26. Not pressed

Relief (Issue No. 6)

27. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 13/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 184/2012

Date of Institution : 02.3.2012

Date of Decision : 01.07.2013

Shri Krishan Kumar s/o Shri Sadhu Ram, r/o Village Draman, P.O. Dul, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Krishan Kumar S/O Sh. Sadhu Ram, Village Draman, P.O. Dul, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1999 to 2001 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.6.1999. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the

fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anup Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 26.6.1999 to 31.12.2001, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 26.06.1999 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.6.1999. However, it has been denied that the artificial/fictional breaks were

provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1999 to 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No
Issue No. 2 : Yes

Issue No. 3 : Not pressed
 Issue No. 4 : No
 Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Krishan Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers/contingent paid workers.

14. Exts. P-1 to P-30 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 06.5.1999. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others,

decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not completed 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:—

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.5.1999. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2001. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1999 to 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 328/2012

Date of Institution : 03.9.2012

Date of Decision : 19.07.2013

Smt. Maya Devi w/o Shri Roop Singh, r/o Village Laharana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Smt. Maya Devi W/O Shri Roop Singh, Village Laharana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during February, 1999 to 31.08.2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 11.1.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 11.1.1999 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General

Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the Petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. Her services were engaged pursuant to the verbal requests made by her (petitioner) from time to time as per the requirement of the work and the availability of the funds.

On merits, paras 1 to 10 of the reply read thus:-

- “1. That the contents of Para are admitted to the extent that the applicant has been engaged in the department during w.e.f. 01/1999 by the Executive Engineer, National Highway Division, H.P.P.W.D., Joginder Nagar as per detail of working days in Annexure-I. This division is functioning w.e.f. January, 2004. No illegal or intentional breaks have been given to applicant by this division.
2. That the content of this Para are wrong, incorrect hence denied. The applicant has been engaged in the department by the Executive Engineer, National Highway Division, H.P.P.W.D. Joginder Nagar up to December, 2003 and by this division w.e.f. January, 2004 as per the availability of works and funds. Moreover the applicant was willing to work, as such and has not raised any dispute prior to this notice. The year-wise working days of the work men whose name mentioned in the petition are attached in the Annexure-II.
3. That the contents of this Para are not admitted. This Division Regularized the daily wages workers who has completed 8 years or more continuous service with 240 days only the service if Sh. Dalip Singh S/o Sh. Mangat Ram, Sh. Goutam Ram S/o Sh. Rirku Ram, Smt. Geeta Devi W/o Sh. Sant Ram, Sh. Sanjay Kumar S/o Sh. Dharam Singh, Sh. Bhagmal S/o Sh. Doulat Ram and Sh. Chanchal S/o Sh. Tirth Ram have been regularized and remaining workers detailed in para 2 are still working as daily waged workers.
4. That the contents of the Para are admitted to extent that applicant has been engaged on works w.e.f. 1/09/2007 continuous as per H.P. Govt Policy.
5. That the contents of this Para are wrong, incorrect and hence denied. It has already been submitted in the para supra that this division is functioning w.e.f., Jan 2004. More over the applicant was initially engaged with out following proper procedure and as per the decision on Hon'ble High court of H.P. in CWP

No.2270/2008 filed by Sharmila Devi Sharma Versus Dr. Y.S. Parmar University and another on basis of ruling of Hon'ble Supreme Court cited in the judgment dated 14/05/2009 has been decided that those appointees to the Govt. Posts whether on daily wages basis, contract, adhoc or otherwise in whose case proper procedure has not been followed and where the vacancies have not been advertised or proper interview, procedure had not been held or where vacancies in the department did not exist but the person have been employed with out following proper procedure, there is no liability on the Govt. to regularize such official.

6. That the contents of this Para are not admitted. This division is functioning w.e.f. Jan 2004 and the applicant has never requested this division regarding fictional break as alleged in this para.
7. That the contents of this para are denied.
8. That the contents of this para are also not admitted. It is submitted that the applicant has been engaged as per works and funds available and no any legal/intentional breaks have been given to the applicant. Moreover the applicant has been initially engaged without following the proper procedure and keeping in view the decision of the Hon'ble High Court of H.P. in C.W.P. No.2270/2008 as stated in para 5 supra, the applicant is not entitled for seniority for the period she has not worked in this department.
9. Para being of judicial nature. Hence no comments.
10. Matter being legal in nature, hence no comments".

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 19.1.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during February, 1999 to 31.8.2007 is illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Smt. Maya Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Sh. Dalip Singh and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of January, 1999. The respondent (RW1) did not whisper a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was

allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 48 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 4)

23. As a sequel to my findings on the issues No. 1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 337/2012

Date of Institution : 03.9.2012

Date of Decision : 19.07.2013

Smt. Meena Devi w/o Shri Rajinder Kumar, r/o Village Khil, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P.
..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Smt. Meena Devi W/O Shri Rajinder Kumar, R/O Village Khil, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during January, 1999 to 31.08.2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 06.1.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 06.1.1999 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with

other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of May, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged?

..OPP

2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Smt. Meena Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.5.1999.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 1.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed

to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 40 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 320/2012
Date of Institution : 03.9.2012
Date of Decision : 04.07.2013

Shri Narinder Kumar s/o Shri Hans Raj, r/o Village and P.O. Pharar, Tehsil Palampur,
District Kangra, H.P. *..Petitioner.*

Versus

The Superintending Engineer, Generation Circle, HPSEB Limited, Palampur,
District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.S. Randhawa, Adv.
For the Respondent : Sh. B.K. Sood, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the action of The Superintending Engineer, Generation Circle, HPSEB Limited, Palampur, District Kangra, H.P. to appoint Shri Narinder Kumar S/O Shri Hans Raj, R/O Village and P.O. Pharar, Tehsil Palampur, District Kangra, H.P. as daily wages worker w.e.f. 26-11-1996 to 25-04-1998 and without terminating his services w.e.f. 26-04-1998 as per the provisions of the Industrial Disputes Act, 1947 and thereafter appointing him continuously from time to time on work order basis w.e.f. 02-06-1999 to 30-06-2008 and finally terminating w.e.f. 01-7-2008 is legal and justified? If not, what relief of back wages, seniority, service benefits and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 26.11.1996. He worked as such up-to 01.07.2008 as well as completed 240 days of work in each and every calendar year of his employment. On 1st July, 2008, his services were abruptly terminated by the respondent. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of the termination of his services, his batch-mates namely Shri Sunka Ram and Shri Vinay Kumar etc. were retained in service by the respondent. The services of Shri Sunka Ram etc. have also been regularized by the respondent in the year 2011. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his

retrenchment. He requested the respondent verbally and by addressing the legal notices to intimate the reasons for ousting him from service, but in vain. Mr. Sukhnai (JE), Shri Ashwani Sood (SDO), Shri Dogra (SE), Shri S.K. Aggarwal (SE), Shri Anil Sharma (SE) and Shri Ashutosh Mahajan used to get unofficial works done from him during the period of his engagement. The act and conduct of the respondent is illegal and unjustified. It is also violative of Section 25-F of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the termination order dated 01.7.2008 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to regularize his services.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition has been instituted by the petitioner at a belated stage. The same is time barred. The petition is not maintainable since no legal or vested right of the petitioner has been infringed in any way.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on muster roll basis w.e.f. 26.11.1996. However, it has been denied that from the date of his initial appointment to 01.7.2008, the petitioner served as a daily wager. He worked as a daily wager on muster roll basis only up-to 25.4.1998 with certain interruptions. Thereafter, the petitioner worked with the Himachal Pradesh State Electricity Board (HPSEB) as a contractor. He was given the contract of cleaning the jungle, uprooting of rank, vegetation, grass and bushes etc. as well as the removal of all kind of rubbish upto a distance of 20 meters outside the periphery of HPSEB Colony and Rest House area at Palampur. Certain other jobs were also assigned to the petitioner on contract basis. The work as a contractor was firstly provided to the petitioner on 02.6.1999. Afterwards, he worked as a contractor on different dates subject to the need and availability of the work. The petitioner never worked as an employee of the HPSEB after 25.4.1998. His services were never disengaged as alleged. The petitioner is not a workman as defined in the Act. Last assignment as contractor was given to the petitioner on 27.4.2008 for deploying three beldars w.e.f. 10.4.2008 to 30.6.2008. As the petitioner was not an employee of the HPSEB the question of his completing 240 days of work in each and every calendar year of his employment or the termination and regularization of his services does not arise. The petitioner has no claim against Shri Sunka Ram and others. He was never deployed for doing any unofficial work. The notices served by the petitioner were duly replied. No provision of the Act has been violated. The claim petition preferred by the petitioner is false, vexatious and frivolous to his knowledge.

In these circumstances, the respondent prays that the petition in hand be dismissed with heavy costs. He (respondent) also prays that compensatory costs be awarded to him.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Vide order dated 04.3.2013, following issues were struck:

1. Whether the final termination of the services of the petitioner by the respondent w.e.f. 01.7.2008 is illegal and unjustified as alleged? ..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches? ..OPR.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Narinder Kumar stepped into the witness box as PW1. In his affidavit Ex. PA submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked on the muster rolls from 26.11.1996 to 25.4.1998 with certain breaks. He denied that after 25.4.1998, he left the job willingly and, thereafter, started working with the Board as a contractor. He also denied that the first work order was provided to him by the HPSEB on 02.6.1999 and he received the payment for the work done by him. He admitted that the work orders, the copies of which are Exts. R1 to R10, bear his signatures. He denied that after 25.4.1998, he never served on muster roll basis as he started working as a contractor. He even denied that to gain the employment in an unlawful manner he has instituted a phoney petition.

9. Conversely, Shri Kuldeep Sharma, Assistant Engineer, Bassi Power House, Joginder Nagar testified as RW1. In his affidavit Ex. RW1/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the services of the petitioner were terminated when he refused to do the unofficial work(s).

10. Ex. PW1/A (corresponding to Ex. RB) is the copy of the legal notice dated 13.11.2009 which was sent to the Secretary, HPSEB and others by the petitioner under registered covers. Ex. PB are the copies of the postal receipts.

11. Ex. PW1/B is the copy of the demand notice dated 14.12.2010 served upon the HPSEB through its Secretary and others by the petitioner. Such notice was sent under the certificate of posting. Ex. PC is the copy of the postal receipt.

12. Ex. PW1/C is the copy of a news item which appeared on 25th July, 2011 in Kangra Kesari (a Hindi daily newspaper). The news item pertains to a beldar of the Irrigation and Public Health Department who was taking care of the pet dog of his Boss.

13. Ex. RA is the year-wise mandays chart in respect of the petitioner. It depicts that the petitioner worked as a daily wager intermittently on muster roll basis from 26.11.1996 to 25.4.1998.

14. Ex. RC is the copy of the reply dated 01.1.2010 sent to Shri J.P. Upadhya, Advocate ld. counsel for the petitioner by the Resident Engineer, Bassi Power House Division, HPSEB, Joginder Nagar after receiving the legal notice dated 13.11.2009 the copy of which is Ex. RB.

15. Ex. RD is the copy of the reply submitted by the Resident Engineer, Bassi Power House Division, HPSEB, Joginder Nagar before the Labour Officer-cum-Conciliation Officer, Dharamshala during the conciliation proceedings.

16. It is the admitted case of the parties that initially the services of the petitioner were engaged as a daily wager on 26.11.1996. The mandays chart Ex. RA is not in dispute. It reveals that the petitioner worked as a daily wager intermittently from 26.11.1996 to 25.4.1998. The version of the respondent is that after 25.4.1998, the petitioner abandoned the job as a daily wager of his own accord and free volition. I am not entering into the controversy as to whether the petitioner abandoned the job on 26.4.1998 or his services were terminated by the respondent on that day since the said dispute, if any, has not been referred to this Court by the appropriate Government for decision. Section 10(4) of the Act mandates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. That being so, this Court is required to decide as to whether the alleged final termination of the services of the petitioner by the respondent on 1st July, 2008 is legal and justified or not?

17. It is not the case of the petitioner that after 25.4.1998 his service conditions were changed to his disadvantage by the respondent in contravention of the provisions of Section 9A of the Act.

18. Relying upon CWP No. 745/2008 titled as Secretary, HPSEB, Kumar House, Shimla and another versus Shri Krishan Chand and another decided on 25.5.2012 by our Hon'ble High Court and Ram Tilak versus State of Himachal Pradesh and others 2011 (1) Him L.R. 348 (HP), the ld. counsel for the petitioner argued that since the services of his client have been wrongly and illegally terminated by the respondent w.e.f. 01.7.2008, he is entitled to the reinstatement and other benefits.

On the other hand, the ld. counsel for the respondent/Board urged that after 25.4.1998, the petitioner was not working as a daily wager and he was not an employee of the Board. He (petitioner) worked as a contractor with the Board up-to 30.6.2008 as per the work orders awarded in his favour. Since the petitioner is/was not a 'workman' as defined under Section 2(s) of the Act, the question of retrenchment of his services in violation of the provisions of the Act does not arise because of which the claim petition deserves rejection.

19. In my considered opinion, the contention of the ld. counsel for the respondent/Board holds the force and is sustainable. As already mentioned the mandays chart Ex. RA makes it clear that the petitioner worked intermittently as a daily wager from 26.11.1996 to 25.4.1998 only. The termination, if any, dated 26.4.1998 is not in dispute.

20. Exts. R1 to R10 are the copies of the work order form(s). The petitioner has admitted his signatures on the same. These work order forms clarify that the petitioner worked as a contractor with the respondent/Board from 02.6.1999 to 30.6.2008 from time to time. The payment for the works done by the petitioner was duly received by him from the respondent/Board. As the petitioner worked as a contractor up-to 30.6.2008 on work order/quotation basis, I fail to understand as to how it lies in his mouth to say that he was an employee of the respondent/Board. Since the petitioner was not a workman, the question of the retrenchment of his services unlawfully by the respondent does not arise. No provision of the Act has been flouted by the respondent.

21. So far as Shri Krishan Chand's case (CWP No.745/2008) (cited supra) is concerned, it deals with a workman whose services were engaged on daily wage basis. Shri Ram Tilak's case (cited supra) relates to the regularization of the services of a daily wager, who was reinstated as per the order of the Court. The trite laid in both these authoritative pronouncements in no way helps the

petitioner. As mentioned earlier after 25.4.1998 the petitioner never worked as a daily wager. The termination dated 26.4.1998, if any, is not in question. From 02.6.1999 to 30.6.2008 the petitioner worked with the respondent/Board as a contractor on work order/quotation basis.

22. It appears to me that the greediness of the petitioner to grab the Government job and money has forced him to file a totally false, baseless and frivolous claim. He is not entitled to any relief.

23. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

24. Taking into account my findings on issue No.1, it is held that the claim petition is not maintainable in the present form.

25. This issue is also decided against the petitioner.

Issue No. 3

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

27. This issue is decided in favour of the petitioner and against his opponent.

Relief (Issue No. 4)

28. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.5,000/- (Five thousand only).

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of July, 2013.

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 330/2012
Date of Institution : 03.9.2012
Date of Decision : 19.07.2013

Smt. Narvada Devi w/o Shri Narpat Ram, r/o Village Kunkar, P.O. Drubbal, Tehsil
Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Smt. Narvada Devi W/O Shri Narpat Ram, Village Kunkar, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during November, 2002 to 31.08.2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 06.1.2002 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip

Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 06.1.2002 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of January, 2003. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any

point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Smt. Narvada Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their

services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2003 and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.1.2003.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D)

were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 50 years. It is well known that a person like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 161/2012
Date of Institution : 02.3.2012
Date of Decision : 01.07.2013

Shri Om Prakash s/o Shri Khampa Ram, r/o Village Digle, P.O. Harabag, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Om Prakash S/O Sh. Khampa Ram, Village Digle, P.O. Harabag, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.02.1998. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.1999. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anup Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.4.1998 to 31.12.1999, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2007. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya’s case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 21.04.1998 to 31.12.1999 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2008 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.

- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.02.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 09.03.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 9th September, 2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2008 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Om Prakash stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 9th September, 2008 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers.

14. Exts. P-1 to P-29 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.3.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.3.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.1999. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 188/2012

Date of Institution : 03.3.2012

Date of Decision : 01.07.2013

Shri Piar Chand s/o Shri Sukh Ram, r/o Village Arthi, P.O. and Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I&PH, Division, Padhar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Piar Chand S/O Shri Sukh Ram, Village Arthi, P.O. and Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 1998 & 1999 by the Executive Engineer, I. &P.H. Division Padhar, District Mandi. H.P., without complying with the provisions of Section 25-F,G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.05.1998. He worked under the Assistant

Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.1999. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anup Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.6.1998 to 31.12.1999, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2007. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 01.06.1998 to 31.12.1999 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2008 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.05.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 09.03.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 and 1999. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 9th September, 2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2008 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 & 1999 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Piar Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 9th September, 2008 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers.

14. Exts. P-01 to P-18 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.4.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total 195 period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.4.1998. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.1999. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 and 1999. The industrial dispute was raised by the petitioner after more than 10 ears. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 99/2011

Date of Institution : 12.07.2011

Date of Decision : 02.07.2013

Shri Prem Singh s/o Shri Achhar Singh, r/o Village Sundal, P.O. Tor Jajar (Mandap), Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether plea of the employer i.e. Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi that services of the Sh. Prem Singh S/O Sh. Achhar Singh has not been terminated but he has abandoned the services w.e.f. 29.5.2006 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 01.8.1998. He worked as such up-to 28.5.2006. On the next day i.e. 29.5.2006, his services were terminated by the respondent on the pretext that he (petitioner) was to be retrenched w.e.f. 08.7.2005 as the specified authority viz. the Chief Engineer, HPPWD, Central Zone, Mandi had accorded the permission to retrench 1636 and 1087 daily rated workmen working in Dharampur Division. He (petitioner) was also one of the workers whose services were required to be dispensed with as per the permission granted by the specified authority. Inadvertently, his (petitioner's) services could not be disengaged w.e.f. 08.7.2005 i.e. the date on which the other daily waged workmen were retrenched. Just after the retrenchment ordered by the respondent by a verbal order, he (petitioner) requested his opponent to reinstate him in service. The respondent assured him that in case his retrenchment would not come in the purview of the permission given by the specified authority he will be re-employed. He requested the respondent time and again to re-engage his services, but in vain. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of his (petitioner's) termination, the persons junior to him namely Smt. Savitri Devi and Shri Rajesh Kumar etc. were retained in service by the respondent. The juniors have now been regularized. Not only this, after his retrenchment new/fresh hands have been engaged by the respondent. From the date of his termination he is not gainfully employed. The work for which his services were engaged is/was of permanent nature and is still continuing. Sufficient funds and work are available with the respondent to reengage his services. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the retrenchment order dated 29.5.2006 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He (petitioner) also prays that the respondent be directed to pay him the compensation.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.8.1998. He worked as such up-to the month of May, 2006. It has been denied that the services of the petitioner were disengaged in accordance with the permission granted by the specified authority. Actually, the petitioner left the job voluntarily without any intimation to him (respondent). Since the petitioner willingly left the service and did not report for duty, the question of issuing any notice to him or paying the retrenchment compensation and retaining the persons junior to him in service does not arise. No provision of the Act has been flouted. It stands admitted that various project works are being carried out by the contractors. The services of the petitioner were not engaged against any permanent work which is still continuing. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he never abandoned the job.

5. Per order dated 20.9.2012, following issues were struck:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 29.5.2006 wrongly and illegally as alleged? ..OPP.
2. Whether the reference is not maintainable in the present form? ..OPR.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No
 Issue No. 4 : Not pressed
 Issue No. 5 : Not pressed
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. The workman/petitioner Shri Prem Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that after May, 2006 he left the job voluntarily. He also denied that no person junior to him is serving under the respondent and the present industrial dispute was raked up by him at a belated stage in the years 2009-2010.

9. Conversely, Shri Anil Sangrai, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he admitted that the workmen whose names figure in para No.5 of the proof affidavit Ex. PW1/A are junior to the petitioner. They are still working and their services have been regularized. Further, he admitted that as per the record, no notice of willful absenteeism was issued to the petitioner after he allegedly abandoned the job calling upon him to resume the work. He denied that the petitioner kept on reporting for duty and requesting for his re-employment.

10. Ex. PW1/B is the category-wise seniority list of all the daily rated workers working in B&R Division HPPWD, Dharampur as it stood on 07.7.2005.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar on 01.8.1998 and he worked as such up-to 28.5.2006. The version of the petitioner is that on 29.5.2006, his services were unlawfully terminated by the respondent by an oral order. While denying the said fact the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

13. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to join his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his willful absence from duties. The plea of abandonment put forth by the respondent is not established.

14. It is not the case of the petitioner that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 29.5.2006. Even the mandays chart Ex. RW1/A does not specifically prove that the petitioner had worked for 240 days or more in a block of 12 calendar months prior to the date of his retrenchment. The provisions of Section 25-F of the Act are thus not attracted in this case.

15. The respondent (RW1) in his cross-examination admitted that the workmen whose names have been disclosed by the petitioner in para No.5 of the affidavit Ex. PW1/A are junior to

him (petitioner). The juniors are still working with the respondent/department and their services stand regularized. The names of the juniors divulged by the petitioner are Smt. Savitri Devi and Shri Rajesh Kumar etc. Taking into account this admission made by RW1 and the seniority list Ex. PW1/B, it can be gathered that the persons junior to the petitioner are still working with the respondent/department. Therefore, it can be safely said that the latter has failed to abide by the principle of 'last come first go'. That being so, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

16. This issue is decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

17. Not pressed.

Issue No. 3

18. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

19. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

20. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

21. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 29.5.2006 except back wages. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 5/2010

Date of Institution : 16.01.2010

Date of Decision : 03.07.2013

Shri Rajender Singh s/o Shri Mahal Singh, r/o Village Rakh, P.O. Sihunta, Sub Tehsil Sihunta, District Chamba, H.P. ..Petitioner.

Versus

The Executive Engineer, IPH Division, Dalhousie, District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Rajender Singh S/O Sh. Mahal Singh by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, H.P. w.e.f. March, 2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of August, 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, termination notices were prepared against him and the other workmen by the respondent. In the month of October, 2000, his services were disengaged by the respondent without assigning any reason. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the

respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of August, 1995. His mandays chart is annexure R-I. Duet to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 01.09.2000, the principle of 'last come first go' was strictly adhered to. No notice under Section 25-F of the Act and the retrenchment compensation were required to be given to the petitioner since he did not complete 240 days of continuous service in a block of 12 calendar months preceding the date of his termination. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or reengaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Rajender Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that the mandays chart (Ex. R1) produced by the respondent is correct. He does not know that in the month of October/November 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons, the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He denied that the termination notice was given to him by the respondent. He also denied that the retrenchment compensation was paid to him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

12. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

13. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

14. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 1995 by the respondent.

16. It is an admitted fact that the services of the petitioner were disengaged by the respondent with effect from 01.09.2000. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.412 of the list.

17. The mandays chart Ex. R1 depicts that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

18. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is August, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

19. Not only this, Ex. RW1/K i.e. the mandays chart pertaining to Shri Sanjay Kumar and three other daily wagers clarifies that their services were engaged by the respondent in the year 2004 and thereafter i.e. after the disengagement of the services of the petitioner. There is nothing on the record to show that at the time of the appointment of Shri Sanjay Kumar and others, an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent.

20. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

22. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

23. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

24. While testifying in the Court as PW1, the petitioner has given his age as 33 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

25. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

26. Not pressed

Relief (Issue No. 6)

27. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 01/09/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 210/2012

Date of Institution : 17.4.2012

Date of Decision : 01.07.2013

Shri Rajiv Chandel s/o Shri Laiq Ram, r/o Village Talward, P.O. Chandpur, Tehsil Sadar,
District Bilaspur, H.P. *..Petitioner.*

Versus

1. The Director of Industries, Shimla-1

2. The Production Officer, Silk Seed Division, Ghumarwin, District Bilaspur, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rajiv Chandel S/O Shri Laiq Ram, R/O Village Talward, P.O. Chandpur, Tehsil Sadar, District Bilaspur, H.P. by the (1) The Director of Industries, Shimla-1 (2) The Production Officer, Silk Seed Division, Ghumarwin, District Bilaspur, H.P. w.e.f. 28-08-2008 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged by the respondent No. 2 as a daily waged beldar on 03.4.2002 in the Silk Centre at Kothi Majher. He continuously worked as such up-to 28.8.2008 as well as completed more than 240 days of work in each and every year of his employment. In the month of March, 2003, his daily waged services were transferred by the respondent No. 2 from Silk Centre, Kothi Majher to the Government Sericulture Centre, Kandrou. He (petitioner) discharged his duties honestly and faithfully. On 28.8.2008, in the evening, his services were disengaged by the respondents by a verbal order without assigning any reason. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of the termination of his services the persons junior to him were retained in service by the respondents. The latter failed to abide by the principle of ‘last come first go’ which amounts to unfair labour practice. His seniority has been ignored/disturbed by his adversaries. Approximately, 15 persons junior to him are still working under the respondents. The applications dated 28.11.2008, 24.3.2009 and 24.11.2009 were preferred by him before the respondents, but in vain. Ultimately, a demand notice dated 06.8.2010 was served upon the respondents by him. The same and the conciliation proceedings did not yield any result. From the date of his disengagement he is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order dated 28.8.2008 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They filed collective reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right has been infringed. The petitioner has no cause of action. He has misrepresented himself and has approached the Court by concealing the material facts. The claim petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the actual name of the petitioner is Shri Rajiv Chandel and not Sh. Rajiv Chand as given in the notification dated 31st March, 2012 issued by the appropriate Government. Paras 2 to 11 of the reply are reproduced below verbatim for ready reference:-

“2. That the contents of para-2 of the claim petition are admitted to the extent of engagement of the applicant as daily wagger w.e.f. 03-04-2002. The man days of the applicant is being attached as Annexure-1. However the engagement of the applicant was on account of project i.e. Project “Gold Mines” for economic development of Rural Poor through adoption of Mushroom cultivation, Floriculture and Sericulture in District Bilaspur,

H.P., sanctioned by the Ministry of Rural Development Govt. of India and headed by Deputy Commissioner-cum-C.E.O. DRDA, Bilaspur (H.P.). The engagement of the applicant and other similarly situated workman was for the farm and nursery development under para 17.3.1 of the guiding principal of the above project (The relevant portion of the guiding principal is being attached as Annexure R-2 as well as the appointment letter is being attached herewith as Annexure R-3. It is further submitted that the applicant had worked on daily basis till 03-06-2004 thereafter his services could not be continued because of closure of the activities for which he was engaged. It is pertinent to mention here that in addition to the applicant three other persons (Seniority list attached as Annexure R-4) were also engaged as daily wagers. Their services were also disengaged along with the applicant and none is continuing or has been re-engaged by the replying respondent. However after his disengagement in the year 2004 the applicant vide application/quotation had sue-motto, freshly applied for the post of chokidar at Govt. Sericulture Centre Kandrou by submitting his lowest bid/quotation on contract basis for a consolidated sum of Rs.1800/- per month. The applicant was selected as one of the lowest bidder amongst the other two person (The copy of the application/quotations are attached herewith as Annexure R-5, R6 & R7. The sanction for the post of chokidar discussed above, was issued vide letter No.248 dated 11-07-2005, on the demand of the concerned In-Charge (Copy of sanction as well as letter are being attached as Annexure R-8 & R9. The applicant has continued to work in the capacity of chokidar on contract basis till the withdrawal of the sanction by the respondent No.2, on account of closure of CDP project in the year 2007. As the project was only for the limited period of 10th five year plan (2002-2007) and after its closure the services of the chokidar were no more required. The articles of store at Kandrou also stand shifted to central store and Ghumarwin. The detail of the service of applicant as chokidar on contract basis is being attached as Annexure R-10.

3. That the contents of the para-3 of the claim petition are wrong and hence denied. The detailed reply has already given in para above. Since the engagement of the applicant was pure on contract basis under a project, thus the services of the applicant were liable to be coterminous with the closure of the project. The applicant was also not entitled for any notice/compensation. The replying respondent had in no way indulged into unfair labour practice as is being alleged by the applicant in this para of his claim petition.

4. That in reply to para 4 of the petition, the seniority list of the workmen working under the establishment of sericulture wing of Industries Department engaged by respondent No. 2, on account of its normal activities and function of sericulture in the District Bilaspur is being Annexed as R-11. None amongst the above seniority list was engaged under the project "Goldmine" or had been retained after the closure of the above project. Thus, the applicant is precluded from claiming parity from the workmen engaged by the respondent No.2, for its normal activities and function as discussed above. It is further submitted that the workmen against whom parity is being claimed are senior to the applicant, the fact which is evident from the seniority list itself.

5. That the contents of the para 5 of the claim petition are admitted. However the representation of the applicant were duly dealt by the replying respondent and it was decided that due to the engagement of applicant under a project and a ban imposed by the Govt. to engage fresh daily wagers, the claim of the applicant can not considered and accordingly the applicant was duly apprised by the replying respondent with the above decision. The copy of the letter dated 04-12-2008 is attached as Annexure R-12.

6. That in reply to para 6 in the claim petition, it is submitted that the applicant had remained on muster roll on contract basis up till 2004 and thereafter w.e.f. 01-05-2005 the

engagement of applicant is on contract basis for a consolidated sum of Rs.1800/- per month. However, no industrial dispute whatsoever has been raised by the applicant with regard to his disengagement w.e.f. 2004. A detailed reply has already been made in para-2 above.

7. That the contents of the para-7 of the claim petition are wrong and hence denied. A detailed reply has already been made in para's above. As has been contended by the applicant in this para of his claim petition, he is not entitled for any of the protection under the Industrial dispute Act 1947.

8. That the contents of the para-8 of the claim petition need no reply being matter of conciliation proceedings. However the applicant has raised the present the Industrial Dispute in a belated stage in the year 2010. Copy of demand notice dated 06-08-2010 is attached as Annexure R-13.

9. That the contents of the para-9 of the claim petition are wrong and hence denied. Since no legal and fundamental right of applicant has been fringed by the replying respondent in any manner as such the present claim petition/industrial dispute is not maintainable. Further as per the facts narrated above the applicant had misrepresented himself and had approached the Hon'ble Court by concealing the material facts.

10. That the contents of the para-10 of the claim petition are wrong and hence denied. The applicant is gainful employed as agriculturist for his livelihood.

11. That the contents of the para-11 of the claim petition are wrong and hence denied. The detailed reply has already given in para supra".

In these circumstances the respondents pray that the petition in hand being meritless be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been pleaded that he has/had no concern with the Goldmines Project.

5. Vide order dated 13.9.2012, following issues were struck:-

1. Whether the services of the petitioner have been terminated by the respondents wrongly and illegally w.e.f. 28-08-2008 as alleged? ..OPP.
2. Whether the petitioner has a cause of action? ..OPP.
3. Whether the petition is not maintainable in the present form? ..OPR.
4. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..OPR.
5. Whether the petition is hit by the vice of delay and laches as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Sh. Rajiv Chandel stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were initially engaged in Goldmines project of the DRDA in District Bilaspur. He also denied that the said project was only for five years i.e. from the year 2002 to 2007. He admitted that three types of work used to be undertaken in the Goldmines project. The same were growing of mushrooms, floriculture and sericulture. He does not know that the DRDA (District Rural Development Agency) had made the concerned department as nodal agencies for running the project. He admitted that the appointment letter Ex. R1 was issued in his name. He feigned ignorance about the fact that his services were engaged in the project on contract basis. Self stated, he was a daily wager and the muster rolls used to be issued in his favour. It was not conveyed to him that per letter Ex. R1, his services were engaged in the Goldmines project. He admitted that he was employed for doing the work of sericulture. He is not aware of the fact that besides him, three other persons namely S/Sh. Ram Pal, Amar Jit Singh and Bir Singh used to do the work of sericulture. He does not know that he was junior to the above named three persons. He admitted that S/Sh. Ram Pal, Amar Jit Singh and Bir Singh are not working under the respondents after the year 2003. He denied that the work for which his services were engaged came to an end because of which his services in the project were disengaged on 30.6.2004. Volunteered, he worked up-to the year 2008. He denied that an application, the copy of which is Ex. R2 was moved by him before the Incharge, Government Silk (Sericulture) Centre, Kandroul for his appointment as a Chowkidar on contract basis. He even denied that Ex. R2, bears his signatures and he had agreed to discharge the duties of the Chowkidar on payment of the consolidated sum of Rs.1800/- per month. He does not know that the Incharge, Government Silk Centre, Kandroul had called the quotations for employment of the Chowkidar on contract basis as well as S/Sh. Ram Lal and Rama Nand too submitted the applications/quotations for working as a watchman on contract basis. He (PW1) denied that he was employed as a Chowkidar on contract basis since the rate/quotation furnished by him was the lowest. He has no knowledge that Silk Seed Production Officer, Ghumarwin had accorded the sanction for his engagement as a Chowkidar on contract basis on payment of Rs.1800/- per mensem. He admitted that the respondents used to pay him Rs.1800/- every month. He feigned ignorance about the fact that the respondents were forced to employ a Chowkidar on temporary and contract basis as an attempt to commit the theft in the office premises was made. He denied that after the closure of the Goldmines project, the articles of the project were shifted to the store at Ghumarwin in the year 2008 because of which there was no need for the engagement of a watchman on contract basis at Kandroul after 30.6.2008. He is not aware of the fact that the work of Goldmines project is lying closed from the year 2007 onwards. He denied that no person junior to him is serving in the project. He refuted that the services of Smt. Somti Devi and Smt. Urmila Devi were not engaged in the project. He does not know that both the ladies were appointed on compassionate grounds in the Sericulture Department after the demise of their husbands. He (PW1) cannot disclose the name of any person whose services were engaged by

the respondents after his termination. Even he cannot tell the name of any person junior to him serving in the project. He denied that at the time of his initial appointment, he was duly informed that his services have been engaged for a short period in the Goldmines project. He controverted that he is not entitled to the re-employment etc. since he worked in the project and he rendered the services only up-to 30.6.2008.

9. Conversely, Shri Baldev Chauhan, Silk Seed Production Officer, Ghumarwin (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner worked continuously from 26.3.2002 to 27.8.2008. Self stated up-to 30.6.2004 the petitioner served in the Goldmines project. Thereafter, from 01.5.2005 to 27.8.2008 he worked as a Chowkidar on contract basis. He admitted that the work of sericulture came to an end in the year 2007 in the Goldmines project. He also admitted that the reply Ex. PX was submitted by them before the Labour Officer-cum-Conciliation Officer, Bilaspur at the time of the conciliation proceedings. Further he admitted that the services of Smt. Somti Devi and Smt. Urmila Devi were engaged after the appointment of the petitioner and they are junior to him. Volunteered, both the ladies were employed as per the permission granted by the Government of Himachal Pradesh whereas the services of the petitioner were engaged on contract basis. The services of the petitioner were not engaged after 28.8.2008 as the articles lying in the store were distributed amongst the farmers and there was no need of a Chowkidar. He admitted that before the disengagement of the services of the petitioner, neither any notice was given to him nor the retrenchment compensation was paid. He denied that the services of the petitioner were terminated in a wrongful manner.

10. Ex. PW1/B is the information supplied to the petitioner by the Additional Director of Industries (Administration) Himachal Pradesh under the Right to Information Act, 2005. The information details the names of the persons who were appointed as daily wagers, on part-time and contract basis. This document depicts that the petitioner was employed initially in the Goldmines project on 03.4.2002 in the Sericulture wing.

11. Exts. PW1/C, D and E are the copies of the applications submitted by the petitioner before the authorities for the incorporation of his name in the seniority list and re-engagement on daily wages/contract basis.

12. Ex. PW1/F is the copy of the demand notice dated 06.8.2010 served upon the respondents by the petitioner.

13. Ex. RW1/B is the mandays chart relating to the petitioner. It shows that he worked on contractual basis in the Goldmines project from 26.3.2002 to 30.6.2004 intermittently.

14. Ex. RW1/C is the copy of the guidelines pertaining to the activity of sericulture in Goldmines project.

15. Ex. RW1/D is the seniority list of the workers engaged in the Goldmines project. The names of four workers including the petitioner appear in this list. The petitioner was the junior most.

16. Ex. RW1/E is the copy of a letter dated 2nd May, 2005 written by the Incharge, Government Silk Centre, Kandrou, District Bilaspur to the Production Officer, Silk Seed Division, Ghumarwin (respondent No.2). As per this letter the Incharge of the Kandrou Centre requested the respondent No.2 to grant the permission for the engagement of the services of a Chowkidar

(watchman) on contract basis since an attempt of theft was made in the premises of the Centre at Kandrou. The request made by the Incharge, Silk Centre, Kandrou was allowed by the respondent No.2. The latter gave the permission for keeping a Chowkidar on contractual basis on payment of the monthly sum of Rs.1800/- after calling the tenders.

17. Ex. RW1/F is the copy of a letter dated 11.7.2005 written by the respondent No.2 to the Incharge, Government Sericulture Centre, Kandrou. Vide this letter the sanction was given for engaging the services of a store Chowkidar purely on contract basis after calling the quotations pursuant to the letter dated 02.5.2005 (Ex. RW1/E).

18. Exts. RW1/G and H are the copies of quotations submitted by S/Sh. Ram Lal and Rama Nand before the Incharge, Government Sericulture Centre, Kandrou. They quoted their rates for being employed as a Chowkidar on contractual basis.

19. Ex. RW1/I is the detail of the mandays relating to the petitioner for the period he served as a Chowkidar on contract basis at Kandrou. This document unfolds that the petitioner worked as Chowkidar from 01.5.2005 to 30.6.2008.

20. Ex. RW1/J is the copy of the seniority list of the employees working under the respondent No. 2.

21. Ex. RW1/K is the copy of a letter which was received by the respondent No.2 from the respondent No.1 in the month of December, 2008.

22. It is the admitted case of the petitioner that the appointment letter Ex. R1 was issued in his name by the respondent No.2. Ex. R1 reveals that in accordance with the application dated 10.9.2001 moved by the petitioner, he was offered the post of beldar on contractual basis in the Goldmines project subject to certain terms and conditions. It was clearly mentioned in the appointment letter that the appointment being contractual the petitioner will have no claim for the regularization of his services. The appointment is purely against the created work. Ex. RW1/D is the seniority list of the workers engaged in the Goldmines project. The names of four workers figure in the list and the petitioner was the junior most. The mandays chart Ex. RW1/B clarifies that the petitioner worked in the Goldmines project on contractual basis from 26.3.2002 to 30.6.2004 intermittently. This mandays chart is not in dispute. The evidence available on the record goes to show that different activities including the activity of sericulture were carried out under the Goldmines project in District Bilaspur. The project period was from the year 2002 to 2007. The seniority list Ex. RW1/D reveals that besides the petitioner, who was the junior most, three other persons namely S/Sh. Ram Pal, Amar Jit Singh and Bir Singh were working in the Goldmines project. Their services were disengaged in the year 2003 i.e. before the termination of the services of the petitioner on 30.6.2004.

In his cross-examination, the petitioner (PW1) admitted that after the year 2003 S/Sh. Ram Pal, Amar Jit Singh and Bir Singh are not working under the respondents. He (petitioner) failed to divulge the name of any person junior to him working in the Goldmines project even now. Not only this, the petitioner has not disclosed the name of any person who was employed in the Goldmines project after the termination of his services on 30.6.2004.

23. The retrenchment dated 30.6.2004 has not been impugned by the petitioner on any count. Even no reference has been received from the appropriate Govt. to decide as to whether the termination dated 30.6.2004 is bad in the eyes of law or not? As per the reference received from the appropriate Govt., this Court is required to decide as to whether the services of the petitioner were wrongly and illegally disengaged by the respondents w.e.f. 28.8.2008 or not?

24. The petitioner, who has signed various documents in english seems to be an educated man. While deposing in the Court as PW1, he denied that he had preferred an application/quotation Ex. R2 before the Incharge, Government Sericulture Centre, Kandrou for his employment as a Chowkidar on contract basis. He (petitioner) has even denied that Ex. R2 bears his signatures. If one compares with a naked eye the signatures of the petitioner appearing on various documents and Ex. R2, it becomes resplendent that Ex. R2 bears the signatures of the claimant/petitioner only. It appears to me that the petitioner is denying his signatures on Ex. R2 with an ulterior motive to gain the employment by hook or crook.

25. As already mentioned the services of the petitioner were initially engaged in the Goldmines project. The project period was from the year 2002 to 2007. The petitioner worked on contractual basis in the project up-to 30.6.2004 only.

26. The evidence adduced by the respondents makes it clear that on 02.5.2005, a letter (Ex. RW1/E) was sent by the Incharge, Government Sericulture Centre, Kandrou to the respondent No.2 for engaging the services of a Chowkidar on contract basis since an attempt of theft was made in the building/premises of the Centre. On the basis of this letter, the requisite sanction/permission was accorded by the respondent No.2 vide letter dated 11.7.2005, the copy of which is Ex. RW1/F. The Incharge of the Kandrou Centre was given the permission to engage the services of a store Chowkidar purely on contractual basis after calling the quotations. The quotations were called by the Incharge of the Kandrou Centre. Three persons namely Sh. Rajiv Chandel (petitioner), Shri Ram Lal and Shri Rama Nand submitted the quotations, the copies of which are Exts. R2, RW1/G and RW1/H. The quotation of the petitioner being the lowest was accepted and he was appointed as a Chowkidar purely on contractual basis in the Kandrou Centre on payment of the consolidated sum of Rs.1800/- per month. The petitioner worked as a Chowkidar on contract basis from 01.5.2005 to 30.6.2008 as is clear from the mandays chart Ex. RW1/I. The contractual appointment of the petitioner was not extended thereafter as the articles of Goldmines project lying in the building at Kandrou were either shifted to the store at Ghumarwin or distributed amongst the farmers. The version of the petitioner that he was not aware of the terms and conditions of engagement is apparently false, as in the quotation Ex. R2 he clearly mentioned that he is ready to work as a Chowkidar on contract basis on payment of the monthly sum of Rs.1800/-.

27. In S.M. Nilajkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608 (Supreme Court), it has been held:—

“The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme or temporary duration.
- (ii) the employment was on a contract, and not as a dailywager simplicitor, which provided interalia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment”.

28. Taking into account the trite laid down in the above quoted ruling and the evidence available on the file, I am at a loss to understand as to how it lies in the mouth of the petitioner to

canvass that his services were wrongly and illegally terminated by the respondents. The provisions of Sections 25-F, 25-G and 25-H of the Act are not attracted in this case.

29. This issue is decided against the petitioner and in favour of the respondents.

Issues No. 2 to 4

30. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

31. Keeping in mind my findings on issue No.1 above, it is concluded that the petitioner has no cause of action. He has not approached the Court with clean hands. The petition is not maintainable in the present form.

32. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

33. These issues are also decided against the petitioner and in favour of his opponents.

Issue No. 5

34. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

35. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 6)

36. As a sequel to my findings on the issues No.1 to 4 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs. 3,000/-.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

39. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 162/2012

Date of Institution : 02.3.2012

Date of Decision : 17.07.2013

Shri Ramesh Chand s/o Shri Sukh Dev, r/o Village Panjangna, P.O. Hara Bag, Tehsil
Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, I.&P.H., Division, Padhar, Distt. Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Ramesh Chand S/O Shri Sukh Dev, Village Panjangna, P.O. Hara Bag, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, I.&P.H. Division Padhar, Distt. Mandi, H.P. without complying with the provisions of section 25-F,G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.02.1998. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2000. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the

Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2001 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.4.1998 to 31.12.2000, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2007. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 21.04.1998 to 31.12.2000 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2008 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.02.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the

whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 07.10.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 8th September, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? .. OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Ramesh Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 8th September, 2010 issued by the I&PH Department, Govt. of Himachal Pradesh regarding regularization of those daily waged/contingent paid workers, who have completed eight years of continuous service as on 31.3.2009.

14. Exts. P-1 to P-26 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 01.2.1998. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No. 5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel

for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;

- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 01.2.1998. From 01.1.2000 to 31.12.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is noxious to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 170/2012

Date of Institution : 02.3.2012

Date of Decision : 17.07.2013

Shri Ravinder Kumar s/o Shri Amar Chand, r/o Village Dhelu, P.O. Dohag, Tehsil Joginder
Nagar, Distt. Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, I.&P.H., Division, Padhar, Distt. Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Ravinder Kumar S/O Shri Amar Chand, Village Dhelu, P.O. Dohag, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during the years 1999 to 2001 by the Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P. without complying with the provisions of section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.05.1999. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 26.5.1999 to 31.12.2001, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as

continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 26.05.1999 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.05.1999. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1999 to 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the

employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Ravinder Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers.

14. Exts. P-1 to P-29 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was initially appointed on 06.5.1999. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the

employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.5.1999. From the said date to 31.12.2002, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days in a calendar year and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1999 to 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 385/2009

Date of Institution : 18.7.2009

Date of Decision : 03.07.2013

Shri Saffri s/o Shri Buta Ram, r/o Village Dumerdi, P.O. Tikari, Tehsil Bhattiyat, District Chamba, (H.P.) ..Petitioner.

Versus

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Saffri S/O Sh. Buta Ram, by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba (H.P.) w.e.f. 14.11.2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of October, 1995 by the respondent. He worked as such up-to the year 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of October, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 14.11.2000, the principle of 'last come first go' was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Safri Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not know that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 10.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 11.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 10.10.2000 worth Rs.3825/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged w.e.f. 25.10.1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 11.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.100 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000, respectively. At the cost of reiteration, I will like to add that the date of initial appointment of the petitioner as per Ex. R1 is 25.10.1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj is junior to the petitioner whose name is at serial No. 100 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000

new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

27. Not pressed

Relief (Issue No.6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 11/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization

of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 186/2012

Date of Institution : 02.3.2012

Date of Decision : 01.07.2013

Shri Santosh Kumar s/o Shri Kanhya, r/o Village Chapprot, P.O. Bassi, Tehsil Joginder Nagar, Distt. Mandi, H.P.
..Petitioner.

Versus

The Executive Engineer, I&PH Division, Padhar, Distt. Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Santosh Kumar S/O Sh. Kanhya, Village Chapprot, P.O. Bassi, Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1999 to 2001 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F,G & H of ibid Act, as the abandonments are not proved but admitting non availability of work during

certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.8.1999. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anup Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 26.8.1999 to 31.12.2001, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 26.08.1999 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant w.e.f. 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.8.1999. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anup Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1999 to 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of the orders of regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Santosh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Department of Personnel, Govt. of Himachal Pradesh. It deals with the regularization of the daily waged workers/contingent paid workers.

14. Exts. P-1 to P-26 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays chart Ex. RW1/A, it can be gathered that the petitioner was

initially appointed on 06.5.1999. This mandays chart is not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the Id. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the Id. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the Id. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays chart Ex. RW1/A unfolds that the services of the petitioner were initially engaged on 06.5.1999. From the date of his appointment, the petitioner was provided the work for more than 240 days in a calendar year by the respondent up-to 31.12.2001. However, he worked for less than 240 days in a calendar year and remained absent from his duties. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1999 to 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

Issue No. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

Issue No. 3

27. Not pressed

Issue No. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 336/2012

Date of Institution : 03.9.2012

Date of Decision : 19.07.2013

Smt. Urmila Devi w/o Shri Bhim Singh, r/o Village Tremli, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks in services of Smt. Urmila Devi W/O Shri Bhim Singh, R/O Village Tremli, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during January, 2000 to 31.08.2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 06.10.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip

Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 06.10.1999 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of March, 2000. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised

by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to her (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. Her (petitioner's) services were never disengaged due to the non-availability of the work and the funds. The persons junior to her have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 20.3.2013, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time as per the reference is illegal and unjustified as alleged? .. OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Smt. Urmila Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was

conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri B.S. Barwal, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.3.2000.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the

budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 45 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

23. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

24. This issue too is decided in favour of the petitioner and against the respondent.

Relief (Issue No. 5)

25. As a sequel to my findings on the issues No.1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 349/2009
Date of Institution : 23.5.2009
Date of Decision : 03.07.2013

Shri Vikram Singh s/o Shri Khajana Ram, r/o Village Bithal, P.O. Tikri, Tehsil Bhatiyat,
District Chamba, (H.P.) ..Petitioner.

Versus

The Executive Engineer, I& PH Division, Dalhousie, District Chamba, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Vikram Singh S/O Shri Khajana Ram by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 11/2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar in the month of Nov. 1994 by the respondent. He worked as such up-to the month of October, 2000 as well as completed 240 days of work in each and every calendar year of his employment. To his utter surprise, a termination notice was received by him and his companions. No reason was assigned for the termination of his services. The respondent infact adopted the pick and choose policy and removed him (petitioner) from service due to the political considerations. At the time of his retrenchment, the principle of ‘last come first go’ was not adhered to by the respondent. Even no permission was taken by the respondent to terminate his services as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The persons junior to him (petitioner) were retained in service by the respondent. After his retrenchment, new/fresh hands have been employed by the respondent. Some of his companions were also issued the termination notices by the respondent. They were, however, retained in service. Their names are S/Sh. Rajinder Singh and Madhi Ram etc. The names of the labourers who have been engaged after his termination are S/Sh. Pawan Singh and Chaman Singh etc. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhaya’s case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Act.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. He also prays that the respondent be directed to pay the interest @ 18% per annum on the amount of the back wages and the allowances etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that he was employed in the month of February, 1995. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The petitioner and 363 other workers were disengaged. At the time of the retrenchment of the services of the petitioner w.e.f. 16.11.2000, the principle of ‘last come first go’ was strictly adhered to. One month notice and the compensation were duly given to the petitioner. While disengaging the workmen, the seniority maintained at the Divisional level was strictly

followed. No person junior to the petitioner has been retained in service or re-engaged. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent's) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Vikram Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that he does not know

that in the month of October/November, 2000, the availability of budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the notice (Ex.R-2) was given to him by the respondent. Volunteered, the notice had come which he refused to receive. He feigned ignorance about the counter foil (Ex. R-3). Self stated, the compensation was not received by him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He is not aware of the fact that S/Sh. Hem Raj and Brij Lal etc. have been re-engaged as per the orders of the Court. He denied that no person junior to him is serving the respondent/department. He refuted that he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not there.

10. Ex. R-1 is the mandays chart relating to the petitioner.

11. Ext. R-2 is the copy of notice dated 12.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. Ex. R-2 depicts that the services of the petitioner were disengaged w.e.f. 16.11.2000 (afternoon) due to the non-availability of the work and the funds.

12. Ex. R-3 is the copy of counter foil of the cheque dated 12.10.2000 worth Rs.4590/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.

13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.

14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.

15. Ex. RW1/D is the seniority list of the daily waged staff who remained on rolls up-to 31.12.2000 in the office of the respondent.

16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. R-1 produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of February, 1995 by the respondent.

18. It is an admitted fact that the services of the petitioner were terminated by the respondent with effect from 16.11.2000 (afternoon) after issuing the notice Ex. R-2. The version of

the respondent is that the services of the petitioner and 363 other similarly situated workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged beldars who remained on rolls of the respondent up-to 31.12.2k. The name of the petitioner figures at serial No.43 of the list.

19. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999, whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is February, 1995. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. Not only this, Shri L.S. Thakur (RW1) in his cross-examination admitted that Smt. Biasa Devi and Shri Hem Raj have been re-engaged. The names of these two workmen figure at serial No. 91 and 112 of the seniority list Ex. RW1/D. Shri Hem Raj and Smt. Biasa Devi are junior to the petitioner whose name is at serial No. 43 of Ex. RW1/D.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was

allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

27. Not pressed

Relief (Issue No. 6)

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 16/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2013.

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 237/2010

Date of Institution : 07.8.2010

Date of Decision : 02.07.2013

Smt. Vimla Devi w/o late Shri Lachman, r/o Village Dhalaun, P.O. Tanihar (Tihra), Tehsil Sarkaghat, District Mandi, H.P. ..Petitioner.

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services as beldar of Smt. Vimla Devi W/O Late Sh. Lachman by the Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. from December, 2003 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of compensation, back wages, seniority and other service benefits the above worker is entitled to?”

2. After the receipt of the reference, a corrigendum dated 27th September, 2011 was received from the appropriate Government. It reads thus:-

“In the issue of reference the date of termination of workman Smt. Vimla Devi be read as “09.2.2004” instead of “December, 2003”.

3. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar by the respondent on 01.10.1999. She continuously worked as such up-to 08.2.2004. On the next day i.e. 09.2.2004, her services were wrongly and illegally terminated by the respondent. She (petitioner) had completed 240 days of work in each and every calendar year of her engagement as well as in a block of 12 calendar months preceding the date of her retrenchment. 1857 other workmen belonging to different categories were also terminated by the respondent w.e.f. 09.2.2004. Subsequently, a number of those workmen were re-engaged by the respondent. She (petitioner) was denied the opportunity of re-employment by the respondent for certain political reasons. At the time of her termination, the persons junior to her namely Sh. Shyam Singh and Sh. Vipin Kumar etc. were retained in service by the respondent. The juniors are still working with the respondent/department. Their services have also been regularized. The respondent failed to abide by the principle of ‘last come first go’. The work against which her (petitioner’s) services were engaged is/was of permanent nature. The same is still continuing. The respondent was having sufficient work and funds at the time of her retrenchment. On 08.7.2005, the respondent retrenched 1087 daily rated workmen once again. Such retrenchment has been held to

be illegal by this Court. The Awards rendered by this Court have been upheld by the Hon'ble High Court of Himachal Pradesh in Civil Writ Petition No.1387/2010 titled as Executive Engineer, Dharampur Division HPPWD Dharampur versus Nihal Chand, decided on 13.5.2010. The Hon'ble High Court has awarded Rs. 50,000/- to each and every retrenched workman. They have also been given the benefit of reinstatement and continuity in service. After the disengagement of her services, she (petitioner) tried her level best to secure the job, but in vain. She has no source of income. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, she (petitioner) prays that the termination order dated 09.2.2004 be upset. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar. She worked from 01.1.1999 to February, 2004. On 09.2.2004, her services were disengaged after observing all the codal formalities. It stands admitted that the petitioner had completed 240 days of work in each and every calendar year of her engagement as well as in a block of 12 calendar months preceding the date of her retrenchment. The workers, who were retrenched in the month of February, 2004 staged a Dharna. After that, the matter was resolved between the Chief Engineer, HPPWD and the workers union. All the retrenched workmen joined their duties except the petitioner. Since the petitioner did not report for duty as per the settlement, the question of retaining any person junior to her in service or violation of the provisions of the Act does not arise. The fact that on 08.7.2005, 1087 more workmen were disengaged has not been denied. Those workers challenged the retrenchment orders. They were re-engaged as per the orders of the Court. The petitioner is gainfully employed. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

5. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been pleaded that maximum workmen, who were retrenched in February, 2004 were re-employed by the respondent/department. She was denied the reengagement.

6. Per order dated 20.9.2012, following issues were struck:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 09.02.2004 wrongly and illegally as alleged? ..OPP.
2. Whether the reference is not maintainable in the present form? ..OPR.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? ..OPR.
6. Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed

Relief. : Claim petition allowed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

9. Smt. Vimla Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She also admitted that the labour became surplus because of which her services were terminated. She denied that no person junior to her is serving the respondent/department. She also denied that she failed to rejoin her duties as per the settlement.

10. Conversely, Shri Anil Sangrai, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he denied that the persons junior to the petitioner were retained in service at the time of the disengagement of the services of the petitioner. He also denied that he has given a phoney statement.

11. Ex. PW1/B is the category-wise seniority list of all the daily waged workers working under B&R Division HPPWD, Dharampur as on 07.7.2005.

12. Ex. RW1/A is the copy of the notice dated 28.1.2004 served upon the petitioner by the respondent under Section 25-F of the Act. As per this notice, the services of the petitioner were terminated by the respondent w.e.f. 09.2.2004 on account of the paucity of the work and the funds.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. From the evidence available on the record coupled with the admissions made by the parties and the mandays chart Ex. RW1/B, it can be gathered that the services of the petitioner were engaged as a daily waged beldar by the respondent on 01.10.1999 and she served continuously as such upto 08.2.2004. In his reply the respondent has not denied the fact that the petitioner had completed 240 days of work in each and every calendar year of her employment as well as in a

block of 12 calendar months preceding the date of her termination i.e. 09.2.2004. This fact also finds support from the mandays chart Ex. RW1/B and the admissions made by RW1.

15. Section 25-F of the Act postulates as under:

“25-F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

16. Perusal of the notice Ex. RW1/A reveals that the same is not in conformity with the provisions of the above quoted Section. One month notice was not given to the petitioner by the respondent before the termination of her services.

17. The seniority list Ex. PW1/B goes to show that at the time of termination of the services of the petitioner, many persons junior to her were retained in service by the respondent. The latter failed to adhere to the principle of ‘last come first go’. The respondent has contravened the provisions of Section 25-F and 25-G of the Act. The termination of the services of the petitioner is, thus, illegal and unjustified. Otherwise too, it is an admitted fact that a number of workmen were removed from service by the respondent on 09.2.2004. Majority of them raised the industrial dispute. The claim petitions preferred by them were allowed by this Court. The Awards passed by this Court were upheld by the Hon’ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen disengaged by the respondent on 09.2.2004 and 08.7.2005, the Hon’ble High Court also directed the respondent to pay Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. To avoid the discrimination, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 3

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP

No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

20. This issue is also decided in favour of the petitioner and against the respondent.

Issues No. 2, 4 and 5

21. Not pressed.

Relief (Issue No. 6)

22. As a sequel to my findings on the above issues, the instant claim petition succeeds and the same is allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the continuity in service and seniority from the date of her illegal termination i.e. 09.2.2004. The petitioner is also held entitled to a lump sum amount of Rs.50,000/- in lieu of back wages and compensation etc. The respondent is directed to regularize the services of the petitioner as per the policies framed by the State Government from time to time. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of July, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 152/2010
Date of Institution : 20.5.2010
Date of Decision : 20.06.2013

Smt. Asha Devi w/o Shri Balbir Singh, r/o Village Chowk, P.O. Bradla, Tehsil Sarkaghat,
District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Asha Devi W/O Shri Balbir Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. Subsequently, a corrigendum was issued by the appropriate Government in the month of July, 2012. It reads thus:-

“In the issue of reference the date of termination of worker Smt. Asha Devi be read as “09.2.2004” instead of “08.7.2005”.

3. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a beldar on daily wages by the respondent on muster roll in the month of March, 1999. She worked continuously as such upto 08.02.2004. During the above said period, she had completed 240 days of work in each calendar year and the last 12 calendar months preceding the date of her termination. On 09.02.2004, her services were terminated by the respondent along with 1697 daily waged workmen. At the time of dispensing with her services, she (petitioner) was paid the retrenchment compensation. While disengaging her services the principle of ‘last come first go’ has not been followed by the respondent. The persons junior to her namely S/Sh. Subhash Chand, Shashi Kant, Bidhi Chand, Dharampal and Inder Singh etc. have been retained in service by the respondent. After the termination of her (petitioner’s) services and the other workmen numbering 1697, in the months of June and July, 2004, some of the workmen have been re-engaged by the respondent. She was not given an opportunity of re-employment. In the month of December, 2004, she approached the respondent as well as the Assistant Engineer, Sub Division, Dharampur to provide her the work on the basis of her seniority. The respondent and the Assistant Engineer conveyed to her (petitioner) verbally that they are not in a position to provide her the job being surplus. The respondent and the Assistant Engineer further told her (petitioner) that the retrenchment process of the other workmen who are surplus is still continuing because of which her services cannot be re-engaged. S/Sh. Balak Ram, Rakesh Kumar, Desh Raj, Abdul Razzak and Mansa Ram etc., who were retrenched on 09.02.2004 alongwith her (petitioner) have been re-employed by the respondent in the months of June and July, 2004 despite the fact that they are/were junior to her. Not only this, on 08.7.2005 again the respondent retrenched 1087 daily waged workmen. Those workers raised the dispute under the Industrial Disputes Act, 1947 (‘the Act’ for short) in the years 2007 and 2008. Approximately 500 workmen have been reinstated by the respondent and paid 50% back wages with all consequential service benefits including the seniority as per the order passed by this Court. The retrenchment order dated 08.7.2005 has been quashed by this Court/Tribunal. The persons who have been reinstated in service and paid 50% back wages are S/Sh. Vijay Kumar, Megh Singh and Sanjay Kumar etc. All of them are/were junior to her (petitioner). The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It is also in contravention of the provisions contained under Sections 25-G and 25-H of the Act. She (petitioner) is unemployed from the date of her illegal termination.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

“1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 09.02.2004 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon’ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice.”

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court and is estopped from filing the petition by her act and conduct. The present petition/statement of claim is not maintainable as other efficacious remedy at the first instance is/was available to the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on the muster roll in the month of March, 1999 and she worked continuously upto 08.02.2004. It has been admitted that the petitioner had completed 240 days of work in all the years and the last 12 calendar months preceding the date of her termination. Further, it stands admitted that the services of the petitioner and 1697 other workmen were terminated on 09.02.2004 and they were paid the retrenchment compensation. The petitioner and the other workmen were retrenched after adopting all the codal formalities. Thereafter, as per the orders of the Government, the workmen were reinstated. The petitioner did not join her duties. No person junior to the petitioner has been retained in service or re-engaged. It has been admitted that 1087 workmen were retrenched on 07.07.2005. Those workmen challenged the retrenchment orders and have been retained in service as per the orders of the Court. Since the petitioner failed to join her duties as per the orders of the Government, the question of retaining the persons junior to her in service or violating the provisions of the Act does not arise. The petitioner never approached him (respondent) for reinstatement. The fact that the petitioner is not gainfully employed from the date of her retrenchment has been denied for want of knowledge. The petition is devoid of any merit.

In these circumstances the respondent prays that the petition in hand be dismissed with costs.

5. No rejoinder has been filed by the petitioner.

6. Per order dated 29.8.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect? OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect? ..OPP.

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect? ..OPR.
4. Whether the reference is not maintainable as alleged. If so, to what effect? ..OPR.
5. Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:—
 - Issue No. 1 : Yes
 - Issue No. 2 : Yes
 - Issue No. 3 : No
 - Issue No. 4 : Not pressed.
 - Relief. : Reference/petition allowed vide operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

9. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

10. The petitioner Smt. Asha Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the seniority list/year-wise mandays chart Ex. PW1/B in respect of the workman namely Sh. Shashi Kant s/o Shri Bihari Lal who was junior to her and retained in service by the respondent at the time of the termination of her (petitioner's) services. Further, she proved Ex. PW1/C i.e. the seniority list of daily waged beldars in respect of the respondent who had completed 8 years of service upto 31.3.2008.

In the cross-examination, she admitted that she had joined as daily waged beldar in 1999 and worked as such upto February, 2004. She also admitted that the respondent/department had terminated her services by giving her a notice and paying three months salary as retrenchment compensation. She admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of the new Division, the labour became surplus. She even denied that no person junior to her was retained in service by the respondent at the time of her retrenchment. She denied that she did not rejoin the service willingly at the relevant time. She controverted that she is gainfully employed as an agriculturist. She denied that the instant industrial dispute was raised by her at a belated stage and she is not entitled to any relief.

11. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also placed on the record Ex. RW1/A i.e. the mandays chart relating to the petitioner. He continued to state that the services of the petitioner were terminated being surplus and due to shortage of the funds. Before terminating the services of the petitioner, the then Executive Engineer, HPPWD, Dharampur had sought the permission from the specified authority namely the then Chief Engineer, HPPWD, Central Zone, Mandi. The specified authority after affording an opportunity of being heard to the petitioner granted the permission to terminate her services. After that, the services of the petitioner were disengaged by giving her a notice Ex. RW1/B and paying the retrenchment

compensation as per Section 25-F of the Act. Thereafter as per memorandum of settlement dated 29.3.2004 (Ex. RW1/C) executed between him (respondent) and the representatives of the workers, it was agreed that all the retrenched workmen numbering 1858 of different categories including the petitioner will be re-engaged upto 16.4.2004. The retrenched workers were also supposed to give their joining upto 30.4.2004. The petitioner failed to resume her duties as per the memorandum of settlement Ex. RW1/C. For this reason, she could not be re-engaged. The present dispute has been raked up by the petitioner at a belated stage in the year 2008. She is working as an agriculturist and earns her livelihood by doing the work of agriculture. As the petitioner failed to join the service as per the terms and conditions of the memorandum of settlement, she is not entitled to any benefit.

In the cross-examination, he admitted that the petitioner worked for more than 240 days during the period of 12 calendar months preceding the date of her termination. He denied that the persons junior to the petitioner were retained in service at the time of the termination of the services of the petitioner. He admitted that the seniority list Ex. PW1/B was issued by the office. He also admitted that one Smt. Mamta Devi w/o Sh. Hans Raj was engaged as daily waged beldar and her services were terminated w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-employed on compassionate grounds as her husband Sh. Hans Raj died while serving the HPPWD. He refuted that Smt. Mamta Devi was junior to the petitioner. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Sh. Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that the memorandum of settlement was neither to the knowledge of the petitioner nor she (petitioner) had authorized any person to sign it on her behalf. He admitted that no notice to rejoin as on 30.4.2004 and thereafter was issued to the petitioner. Further, he admitted that no inquiry was conducted against the petitioner and a notice of one month was not given to her.

12. It is the admitted case of the respondent that the services of the petitioner were engaged as daily waged beldar w.e.f. March, 1999 and she worked as such continuously upto 08.02.2004. It is also the admitted case of the respondent that the petitioner had completed 240 days of work in each calendar year of her service as well as the block of 12 calendar months preceding the date of her termination i.e. 09.02.2004. The respondent in his reply nowhere pleaded that the services of the petitioner and other workmen were dispensed with after seeking permission from the specified authority viz. Chief Engineer, HPPWD, Central Zone, Mandi. Therefore, the evidence of the respondent to that effect being beyond his pleadings cannot be read. Otherwise too, it is an admitted fact that the retrenchment orders passed by the respondent by taking recourse to the provisions of Section 25-N of the Act have already been set aside by this Court. The Awards have already been affirmed by the Hon'ble High Court of Himachal Pradesh.

13. It is an admitted fact that the services of the petitioner were terminated by the respondent w.e.f. 09.02.2004. The contention of the respondent is that before the termination of the services of the petitioner, a notice (the copy of which is Ex. RW1/B) was given to her. The petitioner was also paid the retrenchment compensation. Perusal of Ex. RW1/B goes to show that per this notice dated 23.01.2004, the services of the petitioner were terminated w.e.f. 09.02.2004.

14. Section 25-F of the Act reads thus:

“25-F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

15. Bare perusal of the notice (Ex. RW1/B) goes to show that it does not comply with the requirements of Section 25-F of the Act. Moreover, the respondent (RW1) in his cross-examination admitted that neither one month's notice was served upon the petitioner nor any inquiry was conducted against her before the termination of her services.

16. From the oral and documentary evidence placed on the record it becomes clear that the petitioner had completed 240 days of continuous service in a period of 12 calendar months preceding the date of her retrenchment. Not only this, the persons junior to the petitioner have been retained in service by the respondent. There is nothing on the file to show that before engaging the new/fresh hands, an opportunity of re-employment was given to the petitioner. The principle of 'last come first go' has not been followed by the respondent. His act is violative of Sections 25-G and 25-H of the Act.

17. Coming to the assertion of the respondent that the petitioner failed to join her duties as per the memorandum of settlement dated 29.3.2004, the copy of which is Ex. RW1/C, I will like to say that there is nothing on the file to show that the petitioner was a party to the memorandum of settlement or had authorized someone to sign the same on her behalf. There is not even an iota of evidence on the record to show that the memorandum of settlement was to the knowledge of the petitioner. It is the admitted case of the respondent that no notice was sent to the petitioner on 30.4.2004 and, thereafter, calling upon her to resume her duties as per the memorandum of settlement allegedly arrived at between the parties.

18. It is an admitted fact that thousands of workmen were retrenched by the respondent w.e.f. 09.02.2004 to 08.07.2005. The retrenchment orders relating to a number of workmen have already been set aside by this Court. Pursuant to the Awards passed by this Court as affirmed by the Hon'ble High Court of Himachal Pradesh, a number of workmen have been re-employed and paid a lump sum amount of Rs.50,000/- in lieu of back wages, litigation expenses and compensation. To avoid discrimination amongst the workmen, I feel that the petitioner is also entitled to a sum of Rs.50,000/- on account of back wages and compensation etc. Her retrenchment is bad in the eyes of law.

19. These issues are decided in favour of the petitioner and against the respondent.

Issue No. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP

No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

21. For entitlement to back wages on reinstatement of an employee, the initial burden lies upon her to show that she was not gainfully employed. Only thereafter, the employer is required to rebut the same. The bald statement made by the petitioner (PW1) to the effect that from the date of her termination uptil now she is unemployed cannot be taken as a gospel truth. The petitioner must be doing some work of agriculture etc. to make both the ends meet.

22. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

23. Not pressed.

Relief (Issue No. 5)

24. As a sequel to my findings on the above issues, the instant reference/claim petition succeeds and the same is allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reengage the petitioner forthwith. She shall be entitled to the continuity in service and seniority from the date of her illegal termination. The petitioner is also held entitled to a lump sum amount of Rs.50,000/- in lieu of back wages and compensation etc. The respondent is directed to regularize the services of the petitioner as per the policies framed by the State Government from time to time. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 148/2012

Date of Institution : 19.1.2012

Date of Decision : 11.06.2013

Shri Baldev s/o Shri Beli Ram, r/o Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar,
District Mandi, H.P. *..Petitioner.*

*Versus**....Respondent.**Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Baldev S/O Shri Beli Ram, Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during February, 1998 to Year, 2000, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. 26.02.1998. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to 31.12.2000. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1998 to 31.12.2000. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2005 and 10 years of continuous service on 31.12.2007. As per the policy framed/approved in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2008 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from February, 1998 to 31.12.2000 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2008 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2008 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent’s) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya’s case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya’s case one time benefit was given to the employees who had either completed 10 years of continuous service with days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of February, 1998 to the year, 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Baldev (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an office order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 21.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed on 26/2/1997 by the respondent.

17. The mandays chart Ex. RW1/E clarifies that from the month of February, 1998 to 31st December, 2000 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of Feb., 1998 to December 31, 2000 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 53 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division,

Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

24. Not pressed.

Relief (Issue No. 5)

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31st December, 2000 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of February, 1998 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 259/2010
Date of Institution : 25.10.2010
Date of Decision : 20.06.2013

Shri Bhuri Singh s/o Shri Surjan, r/o Village Rakhota, P.O. Gahar, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

Versus

1. The General Manager, District Industries Centre, Mandi, Distt. Mandi, H.P.

2. The District Sericulture Officer, Mandi, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Sh. Bhuri Singh S/O Sh. Surjan, by the i) The General Manager, District Industries Centre, Mandi, Distt. Mandi, (H.P.) ii) The District Sericulture Officer, Mandi, (H.P.) w.e.f. 01.4.2008 without serving charge-sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him retained by the above employer, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged by the respondent No. 2 (District Sericulture Officer, Mandi) as a daily waged beldar on muster roll basis w.e.f. 19.1.1994. No appointment letter/order was issued in his name by the respondent No.2. He worked as such up-to the year 2004 as well as completed more than 240 days of work in each and every calendar year of his employment. In the year 2004, his services were dispensed with by the respondent No. 2 in contravention of the provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). Before the termination of his services, neither any notice was served upon him nor an inquiry was conducted against him. The retrenchment compensation and the pay in lieu of the notice period as envisaged under Section 25-F of the Act were not paid to him. During the period of his engagement from the year 1994 to 2003, fictional breaks were provided to him by the respondent No.2 time and again. His services used to be disengaged without assigning any specific reason and issuing the notice. Since he (petitioner) had completed more than 240 days of work in the year 1994, he is/was duly covered under Section 25-B (2) (ii) of the Act and his services could not be terminated without complying with the mandatory provisions of the Act. After the retrenchment, he approached the respondents in the years 2004 and 2005 for his reinstatement in the same post. His request was acceded to by the Director of Industries, Himachal Pradesh Government, Shimla. The Director of Industries directed the respondent No.1 viz. General Manager, District Industries Centre, Mandi by a verbal order to reinstate him (petitioner) in service. Accordingly, his services were re-engaged w.e.f. 24.1.2006 and he continuously worked up-to 31.3.2008 under the supervision of Manager Development, District Industries Centre, Rakhota. He (petitioner) was re-employed on bill voucher basis and not on muster roll basis by the respondent No.1. Once again no appointment order/letter was issued in his favour by the respondent No.1. His (petitioner’s) service conditions were also changed by the respondents in violation of Section 9-A of the Act. To his utter surprise, his services were finally terminated by the respondent w.e.f. 01.4.2008. Before the termination of his services, neither any show cause notice was given to him nor he was chargesheeted. No inquiry was conducted against him for the misconduct, if any. The retrenchment compensation was also not paid to him. He had completed 329 days of work from 24.1.2006 to 31.12.2006, 353 days of work from 01.1.2007 to 31.12.2007 and 81 days of work from January 2008 to 31.3.2008. He had served for more than 240 days in a block of 12 calendar months anterior to the date of his termination. After the retrenchment of his services, demand notices dated 05.6.2008 and 17.8.2009 were served upon the respondents

by him. The conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Mandi, but in vain. At the time of the conciliation proceedings, the respondents failed to produce the seniority list of the daily wagers working under them. From reliable sources, he has come to know that at the time of his termination the persons junior to him were retained in service by the respondents. Not only this, after his disengagement new/fresh hands have been appointed by the respondents. From the date of his disengagement, he is unemployed. Even during the years 2005 and 2006, he was not gainfully employed. His services are/were required to be regularized against vacant post of the clerk. The act and conduct of the respondents is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court may kindly be set aside the unlawful termination order dated 01-04-2008 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- (ii) The Hon’ble Court may kindly be again directed to respondents to consider his regularization case as per the policy of State Government”.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. He has misrepresented himself and has approached the Court by concealing the material facts. The claim petition has become in-fructuous with the efflux of time. The services of the petitioner were engaged in a scheme/project which stands closed w.e.f. 31.3.2008.

On merits, it has been owned that the services of the petitioner were initially engaged by the District Sericulture Officer, Mandi (respondent No.2) as a daily waged labourer on 19.1.1994. The petitioner worked with the respondent No.2 up-to 30.9.2004. Thereafter, he voluntarily left/abandoned the job. After the abandonment of the work with the respondent No. 2, the petitioner applied for the post of an unskilled worker vide his application dated 14.10.2005 under the Project/Scheme Rural Development through Diversification in Agriculture, a project of Government of India to the respondent No.1 i.e. General Manager, Distt. Industries Centre, Mandi. The respondent No.1 then appointed the petitioner as a beldar on 10.1.2006 for 89 days on contract basis at Technical Service Station, Rakhota. The contracts were duly executed between the petitioner and the respondent No.1. The petitioner continued working on contract basis in the above named project by executing different contracts up-to 31.3.2008 i.e. the date on which the project was closed by the Government of India. The engagement of the services of the petitioner by the respondent No.1 was coterminous with the project in which he (petitioner) was employed. No fictional breaks were ever provided to the petitioner during the period of his engagement. Moreover, the appropriate Government has not referred the issue of fictional breaks and disengagement of the services of the petitioner by the respondent No.2 in the year 2004 for adjudication to this Court/Tribunal. Under sericulture operation, the work is generally of seasonal nature. In the spring season, Silk Worm Rearing takes place during the month of March/April, whereas, in the autumn season, the Silk Worm Rearing is carried out during the months of August and September. The petitioner used to remain absent from his duties. At the time of the alleged disengagement of the services of the petitioner in the year 2004 by the respondent No.2, no industrial dispute was raised by him. The offices of the respondents No.1 and 2 are independent and separate. The petitioner is debarred from clubbing his dispute against the respondents. The services of the petitioner were engaged in a project/scheme on the basis of his application. The same were

liable to come to an end on the closure of the project. The terms and conditions of engagement in the project were well within the knowledge of the petitioner who executed various contracts in favour of the respondent No.1. The employment of the petitioner was temporary. After abandoning the service of the respondent No.2 in the year 2004, the petitioner got himself freshly employed with a different employer i.e. the respondent No.1. Therefore, the question of any change in his service conditions in contravention of Section 9-A of the Act does not arise. The petitioner was duly apprised about the terms and conditions of his employment in the project. It has been owned that the demand notices dated 05.6.2008 and 17.8.2009 were issued by the petitioner. Such notices were issued at a belated stage. No person junior to the petitioner has been retained in service or engaged/re-engaged. After the alleged disengagement of the services of the claimant/petitioner no new/fresh hands have been appointed. The petitioner is gainfully employed as an agriculturist after the closure of the project. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that he never abandoned the job. At the time of his engagement on 10.1.2006 the respondents did not clearly mention that he has been employed in a project which will come to an end on 31.3.2008. Sericulture department is still working in the State of Himachal Pradesh.

5. Per order dated 20.12.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 01.4.2008 is violative of the provisions of Sections 25-F, G and H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? ..OPP.
2. Whether the reference is not maintainable as the petitioner had been engaged on a specific project/scheme as alleged. If so, to what effect? ..OPR.
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? ..OPR.
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Bhuri Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that per application Ex. DA moved by him before the General Manager, District Industries Centre, Mandi (respondent No.1), he had applied for his employment in a project at Rakhota. He also denied that the letter of engagement (Ex. DB) was received by him from the respondent No.1. Further, he denied that he entered into the agreements/contracts from time to time in favour of the respondent No.1 regarding his employment. He admitted that the agreements for engagement, the copies of which are Exts. DC to DK, bear his signatures. Self stated, his signatures were procured on the agreements after his services were dispensed with. He refuted that at the time of his employment, he was duly informed that his services have been engaged in a project for a specific period and the same will come to an end on the closure of the project. He even denied that at the time of his engagement, it was conveyed to him that on the completion of the project there is no provision of adjustment of the employees working in the project in the regular cadre. He feigned ignorance about the fact that all these conditions have been written in the agreements. He denied that he executed the agreements voluntarily in favour of the respondent No.1 in the presence of the witnesses and his signatures were not obtained at the time of his disengagement as alleged. In the demand notices, he did not mention that he was made to sign the agreements in one go at the time of the termination of his services. He does not know that the project came to an end on 31.3.2008 because of which no agreement was executed thereafter by the respondent No.1 in his favour. He admitted that the instant industrial dispute has been raised by him regarding his retrenchment dated 31.3.2008. He also admitted that the agreements were duly signed by the respondent No.1. From the year 1994 to 30.9.2004, he worked in the office of the respondent No.2 as a daily wager. He admitted that the offices of the respondents No.1 and 2 are separate and distinct. He denied that on 30.9.2004, he abandoned the job and, thereafter, preferred an application before the respondent No.1 for his employment. No dispute regarding his disengagement by the respondent No.2 in the year 2004 was raked up by him. He admitted that he was the only daily wager working in the project. He also admitted that the workmen, whose names have been disclosed by him in para No.6 of the affidavit Ex. PW1/A are serving under the respondent No.2. He denied that he has no claim against Shri Sant Ram etc. as they worked in continuity. Nowadays he makes both the ends meet by doing the work of agriculture and working under MNREGA scheme. He controverted that in the year 2004, he willingly left the service of the respondent No.2. He denied that now the respondent No.1 has no work for him since the project has been closed.

10. Conversely, Shri Amar Nath Dhiman, General Manager, District Industries Centre, Mandi (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that the Sericulture Department comes under the District Industries Centre. He admitted that he holds additional charge of the Sericulture Department and the petitioner worked as a daily wager in the Sericulture Department from 19.1.1994 to 30.9.2004. He denied that on 01.10.2004, the services of the petitioner were wrongly terminated by the respondent No.2. No notice regarding abandonment of the job by the petitioner in the year 2004 was served upon him. He denied that the service conditions of the petitioner were changed in the year 2006. The services of the petitioner were engaged in accordance with the letter Ex. DB. He admitted that the activities of the Sericulture Department are still in progress.

11. Exts. PW1/B and C are the copies of the demand notices dated 5th June, 2008 and 17th August, 2009, respectively, served upon the respondents and the Director of Industries, Himachal Pradesh Government, Shimla by the petitioner.

12. Ex. PW1/D is the copy of the reply dated 24.6.2008 given by the respondent No.1 to the petitioner pursuant to his (petitioner's) letter dated 31.5.2008.

13. Ex. PW1/E is the copy of the reply dated 27th August, 2008 sent by the Director of Industries, Himachal Pradesh, Shimla to the petitioner after the receipt of the demand notice dated 05.6.2008 (Ex. PW1/B) under Section 2-A of the Act.

14. Ex. PW1/F is the reply dated 28.8.2009 sent by the respondent No.1 to the petitioner after receiving his amended/revised demand notice dated 05.6.2008.

15. Ex. PW1/G is the copy of the reply submitted by the respondent No.2 before the Labour Officer-cum-Conciliation Officer, Mandi during the conciliation proceedings.

16. Ex. PW1/H is the mandays chart in respect of Sh. Desh Raj s/o Shri Kapoor Chand, a daily paid casual worker engaged at Govt. Tassar Centre, Chauntra, Distt. Mandi w.e.f. November, 1999 to February, 2003.

17. Exts. PW1/I and J are the letters dated 19.12.2011 and 09.3.2012 written by the petitioner/workman to the Labour Commissioner, Himachal Pradesh, Shimla for issuance of the corrigendum reference.

18. Ex. PW1/K is the seniority list of daily waged workers as it stood on 31st December, 2007 working under the respondent No.2. The name of the petitioner figures at serial No.38 of this list.

19. Ex. RW1/B is the copy of the project proposal/guidelines submitted by the District Rural Development Agency, Mandi (Himachal Pradesh) to the Ministry of Rural Development, Government of India for Diversification in Agriculture in Mandi District under SGSY Special Projects Component.

20. Ex. RW1/C is the copy of a letter dated 27th July, 2007 written by the Chief Executive Officer (DC), Distt. Rural Development Agency, Mandi, Distt. Mandi (HP) to the respondent No.1 and others. It depicts that the project period of Rural Development through Diversification in Agriculture in Mandi District was extended up-to 31st March, 2008 as per the terms and conditions contained in the sanction order dated 7th March, 2002.

21. Ex. RW1/D is the mandays chart relating to the petitioner from 01.1.1994 to 30.9.2004. It shows the period during which the petitioner worked under the respondent No.2.

22. Ex. RW1/E is also the mandays chart pertaining to the petitioner. It clarifies that he served on contract basis under the respondent No.1 from 24.1.2006 to 31.3.2008. The petitioner used to be employed for 89 days every time. Lastly, from 29.1.2008 to 31.3.2008, his services were engaged for 63 days only.

23. It is the basic law that a person signing the document is presumed to agree to its contents. In the demand notices Exts. PW1/B and C or the notices Exts. PW1/I and J for issuance of the corrigendum reference, the petitioner nowhere mentioned that his signatures were obtained on various documents by the respondents at one and the same time to defeat his claim. This fact has also not been pleaded by the petitioner in the statement of claim/demand and the rejoinder. Therefore, the assertion of the petitioner that his signatures were procured by the respondents on Exts. DA and DC to DK at one and the same time while terminating his services being beyond the pleadings and an after thought cannot be looked into. It appears to me that this stand has been taken by the petitioner with an ulterior motive to gain the employment.

24. From the oral and documentary evidence available on the record, it can be gathered that the below given facts stand admitted by the parties:-

- (a) The respondents No.1 and 2 are separate entities having different offices.
- (b) The respondent No.1 was/is holding the additional charge of the office of the respondent No. 2.
- (c) The services of the petitioner were initially engaged by the respondent No.2 as a daily wager and he worked in the office of the respondent No.2 on muster roll basis from 01.1.1994 to 30.9.2004, as is evident from the mandays chart Ex. RW1/D.
- (d) From 01/10/2004 onwards the petitioner was out of the job.
- (e) On 14.10.2005, the petitioner had moved an application, the copy of which is Ex. DA, before the respondent No.1 for his engagement on contract basis in the project.
- (f) A letter dated 10.1.2006, the copy of which is Ex. DB was written by the respondent No.1 to the petitioner. As per this letter, the petitioner was engaged as a beldar on contract basis for 89 days at Technical Service Station, Rakhota, Tehsil Sarkaghat, Distt. Mandi pursuant to the application dated 14.10.2005 (Ex. DA) preferred by him.
- (g) The petitioner was the only daily wager working in the project.
- (h) The petitioner served in the project on contract basis from 24.1.2006 to 31.3.2008. His services used to be engaged for 89 days every time. Lastly, the services of the petitioner were engaged for 63 days as is apparent from the mandays chart Ex. RW1/E.
- (i) The name of the project in which the petitioner was employed by the respondent No.1 was Rural Development through Diversification in Agriculture in District Mandi.
- (j) The project period was extended up-to 31st March, 2008 vide letter Ex. RW1/C.
- (k) The project came to an end on the extended date i.e. 31st March, 2008.
- (l) At the time of his employment for a period of 89 days every time and lastly for 63 days in the project, the petitioner used to execute the agreements of engagement, the copies of which are Exts. DC to DK in favour of the respondent No.1 and
- (m) Since the project in which the petitioner was working came to an end on 31.3.2008, his services were not engaged by the respondent No.1 thereafter.

25. Section 10(4) of the Act postulates that the Labour Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Govt. and the matters incidental thereto. In the instant claim petition, the petitioner, who worked under two different employers viz. the respondents No.1 and 2 at different times, has clubbed his claim against him/them. No reference has been received from the appropriate Govt. regarding the alleged illegal termination of the services of the petitioner by the respondent No.2 w.e.f. 01.10.2004. Even the appropriate Govt. has not made a reference to this Court to decide as to whether artificial/fictional breaks were provided to the petitioner by the respondents or not? That being so, the said controversies raised by the petitioner being beyond the terms of the reference cannot be looked into by this Court. In accordance with the terms of the reference, this Court is required to decide as to whether the services of the petitioner were wrongly terminated by the respondents w.e.f. 01.4.2008 or not?

26. As already mentioned, the respondents No.1 and 2 are separate entities having different offices. The petitioner served under the respondent No.2 from 01.1.1994 to 30.9.2004. After that, his services were freshly engaged by the respondent No.1 as per the application dated 14.10.2005 (Ex. DA) moved by him. The petitioner served under the respondent No.1 in a project on contract basis from 24.1.2006 to 31.3.2008. The month-wise details of mandays relating to his working under the respondent No.1 are Ex. RW1/E. Since the petitioner joined a new office, the question of any change in his service conditions by his employer(s) does not arise.

27. Relying upon Bhikku Ram versus The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, 1996 LLR 259 (P&H), the Id. AR and counsel for the petitioner urged that their client had served for more than 240 days in a block of 12 calendar months anterior to the date of his termination i.e. 01.4.2008. Since no notice under Section 25-F of the Act was served upon the petitioner by the respondents, his retrenchment is bad in the eyes of law because of which the same is required to be upset.

On the other hand, Id. DDA for the respondents argued that the petitioner was working on contract basis in a project under the respondent No.1. The term of the appointment of the petitioner was to come to an end on the expiry of the project period. Since the project was closed on 31.3.2008, the alleged termination of the services of the petitioner/workman will not amount to retrenchment. The act of the respondent No.1 does not come within the mischief of Section 25-F of the Act. To buttress his contention, the Id. DDA relied upon S.M. Nilajkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608 (Supreme Court).

28. To my mind, the argument advanced by the Id. DDA holds the force and is sustainable. At the cost of reiteration, I will like to add that the respondents No.1 and 2 are two different entities having separate offices. The petitioner worked under the respondent No.2 up-to 30.9.2004 only. After that pursuant to the application Ex. DA preferred by him, his services were engaged in a project by the respondent No.1 on contract basis per appointment letter dated 10.1.2006, the copy of which is Ex. DB. The petitioner worked in the project on contract basis under the respondent No.1 from 24.1.2006 to 31.3.2008. His mandays chart is Ex. RW1/E.

29. The fact that the petitioner had applied for his employment on contract basis in the project to the respondent No.1 can be gathered from the application dated 14.10.2005 (Ex. DA). As mentioned earlier, per letter Ex. DB, the services of the petitioner were engaged on contract basis at Technical Service Station, Rakhota by the respondent No.1 pursuant to the application Ex. DA. At the time of his employment from time to time for 89 days and lastly for 63 days, the petitioner executed the agreements for engagement in favour of the respondent No.1. The copies of such agreements are Exts. DC to DK. Browsing of the agreements reveals that it was specifically agreed upon by the parties that the petitioner shall stand disengaged automatically on the last working day on expiry of the contract period. It was also stipulated that any duration of engagement under the agreement(s) shall in no way give the petitioner a right to claim absorption in regular vacancies.

30. In S.M. Nilajkar's case (cited supra), it has been held:-

“The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme or temporary duration.
- (ii) the employment was on a contract, and not as a dailywager simplicitor, which provided interalia that the employment shall come to an end on the expiry of the scheme or project; and

- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment”.

31. Taking into account the trite laid down in the above noted ruling and the evidence available on the record, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his services were wrongly and illegally terminated by the respondents. 32. So far as Bhikku Ram's case is concerned, in the said case, the petitioner/workman was not employed in a project for a fixed duration. Not only this, the work did not cease to exist on the date of termination of the services of the petitioner/workman. This is not the situation in the present case. As highlighted earlier, the services of the petitioner were engaged in a project for fixed duration from time to time. His services were coterminous with the end/completion of the project. Therefore, exposition in Bhikku Ram's case in no way comes to the rescue of the claimant/petitioner.

33. The petitioner has not divulged the name of any person junior to him who was retained in service by the respondent No.1 at the time of his alleged retrenchment. He (petitioner) has also failed to name any person who was employed by the respondent No.1 in the project after the impugned termination. The provisions of Sections 25-F, 25-G and 25-H of the Act are not attracted in this case.

34. To my thinking, the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim. The claim petition is not maintainable. He is not entitled to any relief.

35. These issues are decided against the petitioner and in favour of the respondents.

Issue No. 3

36. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

37. This issue is decided in favour of the petitioner and against his opponents.

Relief (Issue No. 4)

38. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/-.

39. The reference is answered in the aforesaid terms.

40. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

41. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 112/2012

Date of Institution : 06.1.2012

Date of Decision : 11.06.2013

Shri Dalip Singh s/o Shri Puran Chand, r/o Village Dalana, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P.
..Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Dalip Singh S/O Shri Puran Chand, Village Dalana, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1997 to Year, 2003, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f.

February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to the year, 2004. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from February, 1997 to year, 2004 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of October, 1997. However, it has been pleaded that the

petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1997 to 2003 is illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? OPR
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Dalip Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an office order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 21.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed in the month of October, 1997 by the respondent.

17. The mandays chart Ex. RW1/E clarifies that from the date of his initial engagement to December, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and

conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

24. Not pressed.

Relief (Issue No. 5)

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 125/2012

Date of Institution : 06.1.2012

Date of Decision : 11.06.2013

Shri Dhogri Ram s/o Shri Purkhu Ram, r/o Village Balh, P.O. Balh-Joli, Tehsil Joginder Nagar, District Mandi, H.P.
..Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Dhogri Ram S/O Shri Purkhu Ram Village Balh, P.O. Balh-Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1997 to Year, 2003, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f.

February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the year 2004. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to the year, 2004. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as workcharge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department.

The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from February, 1997 to year, 2004 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1997. However, it has been pleaded that the

petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1997 to year 2003 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. Shri Dhogri Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of February, 1997 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to December, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The

petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

21. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

22. Not pressed.

Relief (Issue No. 5)

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref. No. : 140/2012
Date of Institution : 19.1.2012
Date of Decision : 11.06.2013

Shri Gantu Ram s/o Shri Bhekhu Ram, r/o Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Gantu Ram S/O Shri Bhekhu Ram, Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1997 to Year, 2004, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per

letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to 30.9.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from February, 1997 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were

transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year, 1997 to year 2004 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

8. Shri Gantu Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of February, 1997 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to December, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 55 years. It is well known that a person like the petitioner will not sit at home during the period he

is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

21. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

22. Not pressed.

Relief (Issue No. 5)

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 149/2012

Date of Institution : 28.2.2012

Date of Decision : 11.06.2013

Shri Gian Singh s/o Shri Gorja Ram, r/o Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Gian Singh S/O Shri Gorja Ram, Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during March, 1997 to Year, 2004, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. March, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to 31.12.2004. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from March, 1997 to 31.12.2004. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in

favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as workcharge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from March, 1997 to 30.12.2004 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of March, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time

benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of March, 1997 to the year, 2004 is illegal and unjustified as alleged? . . .OPR.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Gian Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an office order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 18.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed in the month of March, 1997 by the respondent.

17. The mandays chart Ex. RW1/E clarifies that from the date of his initial engagement to December, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 52 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the

period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

24. Not pressed.

Relief (Issue No. 5)

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 311/2012

Date of Institution : 28.08.2012

Date of Decision : 21.06.2013

Shri Hem Raj s/o Shri Prem Chand, r/o Village Praghwal, P.O. & Tehsil Pangi, Distt. Chamba, (H.P.) ..Petitioner.

Versus

The Executive Engineer, HPPWD Division, Killar, Distt. Chamba, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Hem Raj S/O Sh. Prem Chand by The Executive Engineer, HPPWD Division, Killar, Distt. Chamba, H.P. w.e.f. Year, 2004 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent in the month of May, 1996. No appointment letter/order was issued in his name by the respondent. He worked as such under the Assistant Engineer, Sub Division No.1, Killar up-to the year 2004. During the period of his engagement, fictional/artificial breaks were provided to him by the respondent from time to time despite the fact that the work and funds were available with the respondent/department. The persons junior to him namely Sh. Jeet Singh and Sh. Gijja Ram etc. were not given any intentional break by the respondent and they worked in continuity. Artificial breaks were provided to him (petitioner) by the respondent so that he does not complete the criteria of 160 days of work in each calendar year as fixed by the State Government for the purpose of continuous service and the regularization of his services on completion of eight years of continuous service as per the policy of the State. The services of his juniors have already been regularized. In the year 2004, his services were finally terminated by the respondent by a verbal order. Before the termination of his services, neither any show cause notice was given to him nor he was charge-sheeted. Moreover, no inquiry was conducted against him and one month pay in lieu of the notice period or the retrenchment compensation were not paid to him. Not only this, at the time of his termination the persons junior to him namely Shri Jeet Singh and Smt. Janto Devi etc. were retained in service by the respondent. The latter failed to adhere to the principle of ‘last come first go’. After his retrenchment new/fresh hands have been engaged by the respondent. Shri Ram Singh

and Sh. Dev Raj etc. were appointed by the respondent in the years 2005 and 2006. A demand notice dated 01.9.2007 was served upon the respondent by him, but in vain. He (petitioner) is also entitled to the regularization of his services in the regular pay scale with all consequential benefits. From the date of his disengagement, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court may kindly be set aside the illegal termination order w.e.f. in the year 2004 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service along with all consequential service benefits throughout.
- (ii) The Hon’ble Court may kindly be again directed to respondent to regularize the services of applicant after completion of 10 years continuous service as per the policy of Mool Raj Upadhaya.
- (iii) Any other relief the Hon’ble Court may deem fit may kindly be granted in the favour of applicant and against the respondent”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed in any way. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on muster roll basis in the month of May, 1996. He did not work regularly for 160 days in a calendar year for 8-10 years continuously. No artificial/fictional breaks were provided to the petitioner at any point of time. During the winter season, no construction activity takes place in Pangi valley. The labourers are retrenched from the month of November to April. As and when the working season starts in the valley all the labourers join their duties. The petitioner failed to work for the whole month from May to October i.e. during the working season. The persons shown junior to the petitioner worked in continuity as per the decision of the Court. The services of the petitioner were never terminated as alleged. In the month of September, 2004, he left the job willingly and thereafter, did not report for duty. The petitioner was an intermittent worker. No person junior to the petitioner has been retained in service or engaged/re-engaged. The principle of 'last come first go' was strictly followed. The persons who worked continuously became eligible for regularization as per the policy of the Government. Shri Ram Singh etc. have been appointed on compassionate grounds and as per the orders of the Court. Since the petitioner voluntarily left the service, the question of issuing any notice to him or paying the retrenchment compensation does not arise. He (petitioner) is gainfully employed as an agriculturist. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 22.03.2013, following issues were struck:

- 1. Whether the termination of the services of the petitioner by the respondent during the year 2004 is illegal and unjustified as alleged? . . .OPP.

2. Whether the petition is not maintainable in the present form? . .OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . .OPR.
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—
 Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. The petitioner Shri Hem Raj stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that in the year 2004, he left the job of his own. He denied that Pangi area remains snow bound for six months because of which mostly the working season is from the month of May to October. He admitted that because of the above said reason, he could not complete the criteria of 160 days of work. He makes both the ends meet by doing the work of agriculture. He denied that since he abandoned the job he is not entitled to the re-employment etc.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division, Killar/Pangi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice was given to the petitioner asking him to resume his duties after he allegedly left the job. Even no departmental proceedings were initiated against the petitioner. He admitted that mostly no work is carried out from the month of November to April and the muster rolls are not issued in favour of the workmen.

10. Ex. PW1/B is the copy of the seniority list of daily waged workers who have been regularized on completion of seven years or more of service as on 30.6.2008 with a minimum of 240 days in non tribal area and 180/160 days in tribal area in each calendar year working under the respondent.

11. Ex. PW1/C is the year-wise/month-wise mandays chart in respect of Shri Gian Chand, a daily wager, working under the respondent.

12. Ex. PW1/D is the seniority list of daily waged worker up-to 31.12.2009 in respect of Sub Division No.1 HPPWD, Killar (Pangi).

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. No reference has been received from the appropriate Govt. for providing the artificial/fictional breaks to the petitioner by the respondent during the course of his employment.

Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per Section 10(4) of the Act.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of May, 1996. The said fact finds support from the mandays chart Ex. RW1/A which is not in dispute. The mandays chart Ex. RW1/A unfolds that the petitioner worked intermittently from the month of May, 1996 to September, 2004.

16. The version of the petitioner is that in the year 2004, his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that in the month of September, 2004, the petitioner, who was an intermittent worker, left the job of his own accord and free volition.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the work. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his willful absence from duties. The plea of abandonment put forth by the respondent is not established.

18. The mandays chart Ex. RW1/A reveals that the petitioner did not complete 160 days of work (Pangi is tribal area) in a block of 12 calendar months preceding the month of his termination i.e. September, 2004 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are, thus, not attracted in this case.

19. From the seniority lists Exts. PW1/B and D as well as the mandays chart Ex. PW1/C pertaining to Shri Gian Chand, it can be gathered that the persons junior to the petitioner are serving the respondent/department. This indicates that the respondent has failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. That being so the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 160 days of work in a block of 12 calendar months anterior to the date/month of his termination.

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP

No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

23. While testifying in the Court as PW1, the petitioner has given his age as 43 years. In the cross-examination, he admitted that nowadays he makes both the ends meet by doing the work of agriculture. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 4)

25. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. September, 2004 except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 103/2011
Date of Institution : 21.7.2011
Date of Decision : 15.06.2013

Shri Jugal Kishore s/o Shri Rai Singh, r/o Village Kalduan, P.O. Bhadal, Tehsil Jawali,
Distt. Kangra, H.P. . . . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Nurpur, Distt. Kangra, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Jugal Kishore S/o Sh. Rai Singh, daily wage worker by The Divisional Forest Officer, Forest Division Nurpur, Distt. Kangra, w.e.f. September, 2008 without serving notice and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. After the receipt of the reference, a corrigendum dated 16th November, 2011 was received in this Court from the appropriate Government. It reads thus:-

“In the issue of reference the words “w.e.f. September, 2008” be read as “time and again from April, 2001 to October, 2002 and finally w.e.f. September, 2008”.

3. The case of the petitioner (as set out in the statement of claim/demand) is reproduced below verbatim for ready reference:-

- “1. That the applicant initially engaged by the respondent as forest worker w.e.f. January, 1999 and he had continued worked under the Range Officer Jawali up to April, 2001 and in the year 1999 and 2000 the applicant had been completed more than 240 days and as per the Section 25-B of the Industrial Disputes Act, 1947 he deemed to be covered under the definition of continuous service. It is submitted here that in the month of May, 2001 the services of applicant had been disengaged by the respondent.
2. That it is categorically submitted here that after his disengagement the applicant immediately approached to the Hon’ble H.P. Administrative Tribunal camp at Dharamshala and filed the O.A. No. 266/2001 dated 19-06-2001 and the Hon’ble Tribunal and the same has been disposed of by the Hon’ble Tribunal dated 05-03-2002 and the case of applicant has been dismissed on the point of jurisdiction and the Hon’ble Tribunal directed to applicant to approach the appropriate forum for his redressal.
3. That during the pendency of the above said O.A. No. 266/2001 the services of applicant had been reengaged by the respondent in the month of July, 2001 and thereafter he continued engaged by the respondent up to April, 2002 and thereafter he again terminated by the respondent in the month of May, 2002 and again reengaged in the month of September, 2002 and provided muster roll for 4 days in the month of September, 2002 and 14 days in the month of October, 2002 and from November, 2002 his services again unlawfully terminated by the respondent.
4. That after his illegal termination from November, 2002 the applicant was not called by the respondent for reported for duties as such at the time of his unlawful

termination the Range Officer Jawali, stated to him presently the works and funds not available in the department and as when the works and funds came in the department he will be called for resume his duties as per his seniority but noting has been done so far upto 11-03-2008. It is submitted here the applicant has represented to the respondent vide his representation dated 12-03-2008 and copy of the representation also sent to the Labour Inspector, Nurpur and on the basis of this representation the Labour Inspector cum Conciliation Officer fixed the conciliation proceeding dated 30-06-2008 vide his letter no 93 dated 06-05-2008 and both the parties has attended the conciliation hearing.

5. That after the representation of the applicant the services of applicant has been reengaged by the Range Officer, Range Office Jawali as per the direction of respondent vide his letter no 247 dated 27-06-2008 in the month of August, 2008 and in the month of August, 2008 he had provided the muster roll for 16 days and engaged up to September, 2008.
6. That it is surprise to mentioned here that the services of applicant again finally terminated by the respondent w.e.f. September, 2008 and before terminating his services no show cause notice and charge sheet given to him regarding his unlawful termination neither the enquiry had been conducted against his alleged misconduct nor the one month pay in lieu of notice period and retrenchment compensation as mandatory required under Section 25-F (a) (b) has not paid to him and without complying the same every termination is null, void and ab-initio. As such the respondent has not only violated the provisions of the Section 25-F of the Industrial Disputes Act, 1947 but also violated the principle of natural justice whereas the applicant had been completed more than 240 days in the year 1999 to 2001 and Section 25-F is very much applicable in this case.
7. That it is categorically stated here that the seniority list pertaining to daily wager is available with the respondent on division and person namely Sanjeev Kumar S/o Sh Uttam Chand, Raman Kumar S/o Sh Diwan Chand, Sanjeev Kumar S/o Sh Rania Ram, Dharminder Singh S/o Sh. Onkar Singh, Inderjit Singh S/o Sh Kartar Singh, Bachittar Singh S/o Sh Ram Singh etc have been retained at the time of his unlawful termination even that after termination the services of applicant new recruitments have been made in the year 2002 to onwards but he has not given any opportunity for re-employment continuously and the same has been violated under Section 25-G and 25-H of the Industrial Disputes Act, 1947. It is submitted here the respondent be submit the seniority list of daily wager of division level from 1999 to onwards along with reply.
8. That it is specifically stated here that persons who have been engaged by the respondent on muster roll in the year 1999 have been regularized after completion of their 8 years continuous service in regular pay scale as fixed by the state government even that the person junior to the applicant who have not terminated by the respondent also regularized by the respondent.
9. That it is again specifically stated here that the applicant has approached to the respondent from time to time for provided him full month muster roll but the respondent intentionally engaged and disengaged as given him breaks from services and terminated in the year 2002 and from September, 2008 whereas works and funds were available with the respondent and respondent cannot be say the applicant had abandon his services on his own.

10. That the act of the respondent to given the breaks to the applicant and terminated in the year 2002 and September, 2008 is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 and the act of the respondent to given the fictional breaks to the applicant also amount to retrenchment and the same has unfair labour practice in the fifth schedule clause 10 of the Industrial Disputes Act, 1947. It is submitted here the applicant is still unemployed and not gainfully employed anywhere from the date of his unlawful termination dated November, 2002 and September, 2008 and the applicant is entitled for full back wages.

Relief Sought,

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

- (i) The Hon'ble Court may kindly be set aside the breaks period of applicant in his continuity of service and directed to respondent to condone the breaks period of applicant in his continuity of service for all purposes.
- (ii) The Hon'ble Court again may kindly be set aside the illegal termination dated November, 2002 and September, 2008 and directed to respondent to reinstate the services of applicant with full back wages, in continuity of service, seniority and all other consequential service benefits.
- (iii) The Hon'ble Court further may kindly be determine the case of applicant for regularization after completion of 8 years continuous service as per the policy of State Government from time to time and directed to respondent to consider the case of applicant for regularization as per policy after completion of 8 years or from the date of junior have been regularized".

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches on the part of the petitioner. He (petitioner) has misrepresented himself and has approached the Court by concealing the material facts.

On merits, paras 1 to 10 of the reply read thus:-

- "1. That the contents of the para are admitted to the extent that Sh. Jugal Kishore S/o Sh. Rai Singh was engaged as daily wager in Jawali Forest Range w.e.f. January, 1999. He had worked for 364 days in the year 1999, 328 days in 2000 and 271 days in 2001 & 114 days in 2002.(mandays chart annexed as annexure R-1). There after the applicant left the job on his own sweet will and reported for duty in August, 2008 and had worked 45 days in the months of August & September, 2008. Thereafter never reported for duty. Rest of the contents of the para are denied. Thus the applicant was intermittent worker and left the job on his own will.

2. That the contents of the para are admitted to extent that the applicant filed O.A. No. 266/2001 in HP. Administrative Tribunal camp at Dharamshala. The rest of the contents of this para need no submission on the part of replying respondent being matter of judicial record.
3. That the contents of this para are wrong and hence denied. It is wrong to allege that the applicant was reengaged in July, 2001 and that he was re-engaged on the order of HP. Administrative Tribunal. No such order had been placed by the applicant with his petition. On the contrary the applicant had worked continuously for more than 240 days in the year 2001. Thus as has been discussed in para above the applicant was in the habit of absenting himself without any information to the respondent office and as and when he had reported for duty the respondent office had issued Muster roll for his engagement. Finally, after working for 29 days in the month of September, 2008, the applicant had abandoned the job with respondent. However, the respondent office through Range Office Jawali in the July, 2009 vide letter No. EII/106/B/C Jawali dated 25.7.2009 had issued notice to the applicant for his re-engagement for the plantation work (Copy of the notice annexed as annexure R-2). However, no heed was paid by the applicant to the above notice which is also indicative of the fact that the applicant is not interested to work with the respondent.
4. That the contents of this para are admitted to the extent of demand notice dated 12.3.2008 and subsequent proceedings before the conciliation officer.
5. That the contents of this para are admitted to the extent that the applicant was called for forestry works vide Jawali Range Office letter No. 247/j dated 27-06-2008 (record of the dispatch register annexed as annexure R-3). The applicant worked for 16 days in August, 2008 and 29 days in September, 2008. Thereafter he again left the job on his own sweet will as he had been doing on earlier occasions and despite notice (annexed as annexure R-2) did not reported for duty.
6. That the contents of this para are wrong hence denied. A detailed reply has already been given in the above paras.
7. That the contents of this para are wrong hence denied. However the seniority list of the respondent office pertaining with the names of the workmen mentioned in this para along with other workmen is being annexed as annexure R-4. It is further submitted that on account of abandonment of job by the applicant he is precluded from claiming an parity with the workmen who had worked continuously.
8. That in reply to para no. 8 of the claim petition it is submitted that the provisions under the policy for regularization of the daily waged workmen working in the state of HP does not attract in any way in favour of the applicant as he had not completed the requisite daily waged service for his regularization by the respondent office.
9. That the contents of this para are wrong hence denied. The applicant never approached the respondent in any manner. The applicant used to come for work intermittently and had left the work on his sweet will. Further the applicant is not entitled for back wages as he is gainfully employed for his livelihood as agriculturist.
10. The contents of the para are wrong hence denied. The respondent never gave any fictional breaks and termination notice to the applicant. The applicant came to

work intermittently and left the work on his sweet will. Further the applicant has raised the present dispute at a belated stage in the year, 2008/2009. Copy of the demand notices dated 12.3.2008 as well as 28.7.2009 are being attached herewith as Annexure R-5”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

6. Per order dated 20.04.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent time and again from April, 2001 to October, 2002 and finally w.e.f. September, 2008 is illegal and unjustified? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . .OPR.
4. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? . . .OPR.
5. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes, Partly No

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

9. Shri Jugal Kishore (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that the work in the forest department is seasonal. He also denied that the services of the labourers are engaged as per the availability of the work and the funds. He denied that he used to remain absent from his duties. He admitted that in the year 2008, he worked for 45 days only as well as he did not work from October 2002 to August 2008. He denied that thereafter, he left the job. He even denied that the

notice dated 25.7.2009 (Mark-A) was sent to him by the Range Officer by post calling upon him to resume his duties. He denied that despite the receipt of the notice Mark-A, he failed to report for duty. Further, he refuted that he is not entitled to the re-employment etc. Nowadays he makes both the ends meet by doing the work of agriculture.

10. Conversely, Shri J.C. Katoch, Divisional Forest Officer, Nurpur (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he denied that artificial/fictional breaks were provided to the petitioner from time to time. He admitted that the name of the petitioner does not figure in the seniority list Ex. RW1/E. He also admitted that all the daily wagers, whose names find mention in Ex. RW1/E are junior to the petitioner. Further, he admitted that the services of the workmen at serial No. 38 and 39 of the seniority list were engaged after the termination of the services of the petitioner. Self stated, safai karamchari was engaged and Smt. Swarna Devi was appointed on compassionate grounds.

11. Ex. PW1/B is the copy of an order dated March 5, 2002 pronounced by the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal in O.A. (D) No. 266/2001 titled as Jugale Kishore versus The State of H.P. through Secretary (Forests) to the Govt. of H.P., Shimla and others. It depicts that the Original Application instituted by the claimant/petitioner was returned to him for presentation before the appropriate Court/Forum as the Hon'ble Administrative Tribunal had no jurisdiction to hear the cases following under the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

12. Ex. PW1/C is the copy of the demand notice dated 20.8.2002 served upon the respondent by the petitioner.

13. Ex. PW1/D is the copy of the notice sent by the Labour Inspectorcum-Conciliation Officer, Nurpur (Kangra) to the respondent pursuant to the demand notice dated 20.8.2002 served by the petitioner.

14. Ex. PW1/E is the copy of another demand notice dated 12.3.2008 served upon the respondent by the petitioner. It corresponds to Ex. RW1/B.

15. Ex. PW1/F is the copy of the notice sent by the Conciliation Officercum-Labour Inspector, Nurpur to the respondent after the receipt of the demand notice Ex. PW1/E.

16. Ex. PW1/G is the copy of a notice dated 27.6.2008 which was allegedly sent to the petitioner by the Range Forest Officer, Jawali asking him to report for duty for doing the seasonal plantation work.

17. Ex. PW1/H is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/A.

18. Ex. PW1/I is the copy of the corrigendum dated 16th November, 2011 which was received in this Court from the appropriate Government.

19. Ex. RW1/C is the copy of the despatch register showing that the notice dated 27.6.2008, the copy of which is Ex. PW1/G was sent to the petitioner by way of ordinary dak.

20. Ex. RW1/D (previously Mark-A) is the copy of the notice dated 25.7.2009 allegedly sent to the petitioner by the Range Forest Officer, Jawali asking him to join his duties.

21. Ex. RW1/E is the copy of the seniority list of daily wagers working under the respondent.

22. Ex. RW1/F is the copy of the demand notice dated 28th July, 2009 sent to the respondent by the petitioner.

23. At this stage, I will like to highlight that during the course of the arguments, the Id. counsel for the claimant did not press the claim regarding giving breaks in service to the petitioner time and again from April, 2001 to October, 2002 (as per reference). That being so, this Court/Tribunal is required to decide as to whether the final termination of the services of the petitioner allegedly ordered by the respondent in the month of September, 2008 is/was legal and valid or not?

24. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays charts Exts. PW1/H and RW1/A are not in dispute. Their perusal discloses that the services of the petitioner were initially engaged by the respondent in the month of January, 1999 and he worked intermittently up-to the month of September, 2008. The respondent has not placed on the record any document evidencing that he employs the daily wagers only for seasonal forestry works from time to time. Otherwise too, the mandays charts Exts. PW1/H and RW1/A reveal that the petitioner had worked for 364 days, 328 days and 271 days in the years 1999, 2000 and 2001, respectively. A person working for more than 300 days in a year cannot be termed as a seasonal worker by any stretch of imagination.

25. The version of the petitioner is that in the month of September, 2008, his services were finally terminated by the respondent by a verbal order wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner used to work as per his sweet will. He left the job of his own accord and free volition.

26. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is no cogent and convincing evidence on the record to show that the notices dated 27.6.2008 (Ex. PW1/G) and 25.7.2009 (Ex. RW1/D) which were allegedly sent to the petitioner by the Range Forest Officer, Jawali asking him to report for duty were received by the addressee (petitioner). Moreover, the copy of despatch register has not been placed/exhibited on the file evidencing that the notice dated 25.7.2009 Ex. RW1/D was sent to the petitioner. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. Otherwise also, in his cross-examination, the respondent (RW1) admitted that the workmen, whose names figure at serial No.38 and 39 of the seniority list Ex. RW1/E, were employed after the disengagement of the services of the petitioner. In view of this admission made by RW1, it cannot be said that the petitioner had abandoned the job willingly.

27. Mandays chart Ex. PW1/H (corresponding to Ex. RW1/A) reveals that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the month of his termination i.e. September, 2008 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are, thus, not attracted in this case.

28. As mentioned earlier, Ex. RW1/E is the seniority list of the daily wagers working under the respondent. The name of the petitioner does not figure in this list. The respondent (RW1) in his cross-examination admitted that all the daily wagers, whose names are there in the list Ex. RW1/E, are junior to the petitioner. This indicates that the respondent failed to adhere to the

principle of 'last come first go'. Not only this, as already mentioned, RW1 admitted that the workman, whose name figures at serial No.39 of the seniority list, was appointed after the termination of the services of the petitioner. There is nothing on the record to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner. Such being the situation, it can be safely said that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. Therefore, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his retrenchment.

29. This issue is decided accordingly.

Issue No. 2

30. Not pressed.

Issue No. 3

31. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

32. During the cross-examination, the petitioner (PW1) admitted that he earns his livelihood by doing the agricultural work. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

33. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 4

34. Not pressed.

Relief (Issue No. 5)

35. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The final termination of the services of the

petitioner by the respondent in the month of September, 2008 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the month of his illegal termination i.e. September, 2008 except back wages. Parties to bear their own costs.

36. The reference is answered in the aforesaid terms.

37. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

38. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 150/2012
Date of Institution : 28.02.2012
Date of Decision : 11.06.2013

Shri Khel Singh s/o Shri Moti Chand, r/o Village Ghisal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Killar, District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T. R. Bhardwaj, AR
Sh. I. S. Jaryal, AR
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether giving breaks in the services of Sh. Khel Singh S/o Sh. Moti Chand, Village Ghisal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. from time to time during the years 1999 to 2004 and finally terminating him during year, 2005 by the Executive Engineer, HPPWD Division Killar, Distt. Chamba, without complying with the provisions the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent in the month of May, 1994. He worked as such up-to the month of October, 2005. During the period of his engagement, the respondent used to give him the artificial breaks. He had preferred Original Application No. 3087/1999 before the erstwhile Himachal Pradesh Administrative Tribunal, Shimla. The Hon'ble Tribunal per order dated 19.4.2000 directed the respondent/department to re-engage his (petitioner's) services in the same capacity in which he was working when his services were disengaged. It was also ordered by the Hon'ble Administrative Tribunal that the period of absence between the date of disengagement and re-engagement shall count towards the seniority. He (petitioner) shall not be entitled to the back wages. He never remained absent from work of his own. Intentional breaks were provided to him by the respondent just to favour the junior workmen who are the favorites of the respondent so that he (petitioner) does not complete the criteria of 160 days of work (Pangi is tribal area) in each calendar year of his employment. The break period is required to be counted for the purpose of continuous service as envisaged under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). The persons junior to him were not given the fictional breaks by the respondent. In the month of November, 2005, his (petitioner's) services were finally terminated by the respondent by a verbal order without assigning any reason. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. He has spotless service record. Neither he was charge-sheeted nor an inquiry was conducted against him. At the time of the retrenchment of his services, the persons junior to him were retained in service by the respondent. The names of the juniors are S/Sh. Balak Chand and Amar Nath etc. The respondent failed to abide by the principle of 'last come first go'. No prior approval of the Government was obtained by the respondent before the termination of his services. Not only this, the overall seniority list of daily waged workmen working under the respondent has not been circulated or got noted from the concerned workmen. After his disengagement, new/fresh hands have been engaged by the respondent. He was not given an opportunity of reemployment. His juniors worked continuously with the respondent. Their services have also been regularized. If his services would not have been terminated illegally, he (petitioner) must have completed 8 years of continuous service as on 31.12.2001. He is/was entitled to the regularization of his services on completion of 8-10 years of service w.e.f. 01.1.2004 as per the decision of the Hon'ble Apex Court in Mool Raj Upadhaya's case. He suffered huge financial loss at the hands of the respondent. From the date of his disengagement, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- "A. The oral order of termination of my services passed by the respondent (in the month of October/November, 2005) be set aside being illegal, arbitrary and unjustified.
- B. To direct the respondent to re-instate the services of petitioner w.e.f. the date of my illegal termination alongwith full back wages, seniority including continuity of services as the petitioner remained un-employed since the date of illegal retrenchment/termination of services.
- C. To direct the respondent to count the period of intermittent breaks given in service to the applicant/petitioner prior to November, 2005 from time to time be counted towards the calculation of continuous service of 160 days in each calendar year under Section 25-B of ID Act and regularize the services of the petitioner w.e.f. 01.01.2002 or 01.01.2004 alongwith all consequential benefits.

- D. To direct the respondent for the production of original record pertaining to the case of petitioner.
- E. To direct the respondent to re-engage petitioner on muster roll basis pending final decision of the case.
- F. Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar. However, it has been pleaded that the petitioner was initially appointed in the month of May, 1998 and not in the month of May, 1994 as claimed. His mandays chart is annexure R-1. Neither any artificial/fictional break was provided to the petitioner during the course of the employment nor his services were disengaged as alleged. In the year 2005, the petitioner left the job voluntarily for taking up the profession as a whole time agriculturist. In the tribal area of Pangi valley generally the working season spans between the months of April to November. During the remaining months, the area remains snow bound. The petitioner did not report for duty during the working season of his own. The workmen whose names have been disclosed by the petitioner, were punctual and became eligible for regularization of their services as per the policy of the Government. As per instructions issued by the Government of Himachal Pradesh, 160 days of work during each calendar year for continuous period of eight years is required in the tribal area of Killar (Pangi) for seniority/regularization. The petitioner has not fulfilled the said criteria because of which his name cannot be considered for seniority/regularization. As the petitioner abandoned the job, the question of issuing any notice to him or paying the retrenchment compensation does not arise. The petitioner has no cause of action. No person junior to the petitioner is serving under him (respondent) or engaged/re-engaged. No new/fresh hands have been employed. The principle of 'last come first go' was adhered to. The petitioner despite the availability of work was not interested to rejoin the service. Now the State Government has imposed a complete ban on the engagement of the daily paid workers. The petitioner is gainfully employed as an agriculturist. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he willingly left the job or used to remain absent.

5. Vide order dated 17.11.2012, following issues were framed :

1. Whether giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2004 and the final termination of the services of the petitioner by the respondent in the year 2005 is illegal and unjustified as alleged?
..OPP.
2. Whether the claim petition is not maintainable in the present form? ..OPR.
3. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Khel Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he served the respondent/department as a beldar from May, 1998 to October, 2005. He denied that in the month of October, 2005, he left the service voluntarily. He admitted that Shri Balak Chand etc. are senior to him and worked in continuity with the respondent/department. He earns his livelihood by doing the work of agriculture. He denied that he abandoned the job because of which he is not entitled to the re-employment.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division Killar (Pangi) (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that as per the record, neither any notice was given to the petitioner after he allegedly left the service nor the departmental proceedings were initiated against him. He also admitted that no notice was served upon the petitioner asking him to resume his duties. Further, he admitted that mostly from the month of November to April, no work is in progress because of which the muster rolls are not issued in the names of the workers. Self stated, muster rolls are issued to some of the labourers even during these months as per the requirement. He admitted that S/Sh. Gian Chand and Mehar Chand were employed in the year 2007. At the time of their engagement an opportunity of re-employment was not afforded to the petitioner.

10. Mark-A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/A.

11. Ex. RW1/B is the month/year-wise mandays details pertaining to Shri Balak Chand and nine other daily waged beldars serving under the respondent.

12. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays charts Mark-A and Ex. RW1/A are not in dispute. Keeping in view the same and the admissions made by the petitioner (PW1), it can be safely said that the services of the petitioner were initially engaged by the respondent in the month of May, 1998 and he worked as such up-to the month of October, 2005.

13. As per the reference received from the appropriate Government this Court is required to decide as to whether (i) artificial/fictional breaks were provided to the petitioner by the respondent from time to time during the years 1999 to 2004 or not and (ii) as to whether final termination of the services of the petitioner by the respondent during the year 2005 is illegal and unjustified or not?

14. So far as the intentional breaks from the year 1999 to 2004 are concerned, I will like to say that the respondent has pleaded that the working season in Pangri area spans between the months of April to November. For the rest of the months no activity takes place as the area remains snow bound. The petitioner did not report for duty during the working season voluntarily. In his cross-examination, the respondent (RW1) admitted that mostly no work is undertaken from the month of November to April because of which the muster rolls are not issued in favour of the workmen. He went on to say that as per the requirement even during these months muster rolls are issued in the names of a few labourers. Non issuance of the muster roll in the name of a workman without any fault on his part is nothing but unfair labour practice. If the petitioner used to willfully remain absent from duty, then why no show cause notice was issued to him by the respondent or no action was taken against him? The reasons to that effect being obscure go to show that the respondent is not speaking the truth.

15. The mandays chart Ex. RW1/B clarifies that Smt. Chhin Dei etc. who are junior to the petitioner, were provided the work for more than 240 days in a calendar year by the respondent/department. This indicates that the respondent resorted to favoritism. The discrimination perpetuated by the respondent is writ large. Intentional breaks were provided by the respondent to the petitioner from the year 1999 to 2004 so as to favour the persons junior to him (petitioner).

16. Coming to the final termination of the services of the petitioner by the respondent in the month of November, 2005, I will like to highlight that the version of the petitioner is that his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition after working up-to the month of October, 2005.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to join his duties after he allegedly left the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. It has already been concluded by me that from the year 1999 to 2004, artificial/fictional breaks in service were provided to the petitioner by the respondent. The break period is required to be counted for the purpose of continuous service as per Section 25-B of the Act.

19. The mandays chart Mark-A (corresponding to Ex. RW1/A) unfolds that the petitioner did not complete 160 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

20. The respondent Shri M. P. Dhiman (RW1) in his cross-examination admitted that S/Sh. Gian Chand and Mehar Chand were employed in the year 2007. At the time of their engagement an opportunity of re-employment was not afforded to the petitioner. The mandays chart Ex. RW1/B reveals that S/Sh. Sham Lal and Gautam Singh were appointed by the respondent in the year 2006 and 2007 i.e. after the termination of the services of the petitioner. At the cost of reiteration, I will like to add that it is an admitted fact that at the time of engaging new/fresh hands an opportunity of re-employment was not given to the petitioner. Moreover, Ex. RW1/B goes to show that the persons junior to the petitioner namely Smt. Chhin Dei and Sh. Parkash Chand etc. are/were

serving the respondent/department. This indicates that the respondent failed to adhere to the principle of 'last come first go'. His action contravenes the Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 160 days of work in a block of 12 calendar months anterior to the date/month of his termination.

21. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

22. Not pressed.

Issue No. 3

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. While testifying in the Court as PW1, the petitioner has given his age as 38 years. In the cross-examination he admitted that he makes both the ends meet by doing the work of agriculture. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

Relief (Issue No. 4)

27. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks in service given to the petitioner by the respondent from time to time during the years 1999 to 2004 are held to be wrong and illegal. The final termination of his (petitioner's) services by the respondent in the month of November, 2005 is also held to be bad in the eyes of law. The same is quashed and set aside. The break period shall be counted for the purpose of continuous service. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the month of November, 2005. However, it is made clear that the petitioner shall not be entitled to the back wages for the break period or till the re-engagement of his services. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 116/2012
Date of Institution : 06.1.2012
Date of Decision : 11.06.2013

Smt. Lachhi Devi w/o Shri Todar Ram, r/o Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Smt. Lachhi Devi W/O Shri Todar Ram, Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during February, 1997 to Year, 2004, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. She worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar.

No appointment order/letter was issued in her name by the respondent. The latter used to engage her services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the year 2004. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. The respondent gave her the artificial breaks from February, 1997 to the year, 2007. The persons who were working with her (petitioner) or joined the service after her were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to her namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of her (petitioner's) services. The persons junior to her have been regularized by the respondent earlier to her against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. She (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, she is entitled to the regularization of her services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. She is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from February, 1997 to year, 2004 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon’ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD,

Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time she was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. She used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of February, 1997 to the year, 2004 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect?
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Smt. Lachhi Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that as and when the muster roll was issued in her name, she was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to her. She denied that she has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to her. He denied that the petitioner never remained absent from her duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed in the month of February, 1997 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the date of her initial engagement to December, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The

petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. In the petition, the petitioner has nowhere pleaded that during the break period, she was without any work. While testifying in the Court as PW1, the petitioner has given her age as 57 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

21. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

22. Not pressed.

Relief (Issue No. 5)

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 111/2012
Date of Institution : 06.1.2012
Date of Decision : 11.06.2013

Shri Nagender Singh s/o Shri Ram Singh, r/o Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Nagender Singh S/O Shri Ram Singh, Village Balh, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1997 to Year, 2004, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days

each month were given by the respondent up-to the year, 2004. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to the year, 2004. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as workcharge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from February, 1997 to year, 2004 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of July, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004.

After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year, 1997 to year 2004 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Nagender Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an office order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 21.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed in the month of July, 1997 by the respondent.

17. The mandays chart Ex. RW1/E clarifies that from the date of his initial engagement to December, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and

conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

24. Not pressed.

Relief (Issue No. 5)

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 123/2012
Date of Institution : 06.1.2012
Date of Decision : 11.06.2013

Shri Roshan Lal s/o Shri Lekh Ram, r/o Village and P.O. Pipli, Tehsil Joginder Nagar,
District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Roshan Lal S/O Shri Lekh Ram, Village and P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2002 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. August, 2002. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from August, 2002 to 30.9.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of 'last come first go' was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner's) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.07.2009 and 10 years of continuous service on 31.07.2011. As per the policy framed/approved in Mool Raj Upadhaya's case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from August, 2002 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 30.07.2011 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the claimant/petitioner. The services of the petitioner were engaged as per the requirement of the work and the availability of the funds from time to time pursuant to the verbal requests made by him.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on muster roll basis in the month of November, 2002. However, it has been pleaded that the petitioner was initially appointed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. No artificial/fictional breaks were provided to the petitioner at any point of time. As and when the services of the petitioner were engaged, he was duly made aware that he has been temporarily appointed for a particular period i.e. 10-15 days as the case may be since he (respondent) was not in a position to provide the work for the whole month. The petitioner is being continuously engaged from the year 2008 onwards and the muster rolls for the entire month are being issued in his name as per the availability of the work and the funds. At the time of the disengagement of the services of the petitioner, the principle of 'last come first go' was duly followed. The workmen whose names have been disclosed by the petitioner worked in continuity with him (respondent). His (respondent's) office deals with the development activities. The workmen are engaged and disengaged as per the requirement of the work and the availability of the budget. The petitioner has not completed 240 days or more of continuous service up-to the year 2007. As per the criteria fixed by the Government, a daily wagger who has completed eight years or more of continuous service with 240 days in each and every calendar year is entitled to the regularization. The petitioner does not fulfill the said criteria. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2002 to August, 2007 is illegal and unjustified as alleged? OPP.

2. Whether the petition is not maintainable in the present form? . OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . OPR.

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Roshan Lal (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/D were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner. 13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed w.e.f. 01.11.2002 by the respondent.

15. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to August, 2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

16. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

17. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

18. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

19. Not pressed.

Issue No. 3

20. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

21. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

22. Not pressed.

Relief (Issue No. 5)

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to August, 2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 142/2012

Date of Institution : 19.1.2012

Date of Decision : 11.06.2013

Smt. Shanta Devi w/o Shri Bhim Singh, r/o Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, B & R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Smt. Shanta Devi W/O Shri Bhim Singh, Village Banon, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during the year, 1997 to August, 2003, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. She worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in her name by the respondent. The latter used to engage her services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. The respondent gave her the artificial breaks from February, 1997 to 30.9.2007. The persons who were working with her (petitioner) or joined the service after her were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to her namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of her (petitioner’s) services. The persons junior to her have been regularized by the respondent earlier to her against the policy of the State. A similar case titled as Suresh Kumar vs. The

Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. She (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya's case, she is entitled to the regularization of her services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. She is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon'ble Court kindly be set aside the illegal period of breaks from February, 1997 to 30.9.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.
- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of February, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time she was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. She used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services

have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year, 1997 to August, 2003 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 :	Yes
Issue No. 2 :	Not pressed
Issue No. 3 :	No
Issue No. 4 :	Not pressed
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Smt. Shanta Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that as and when the muster roll was issued in her name, she was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to her. She denied that she has instituted a phoney petition.

9. Conversely, Shri K. S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to her. He denied that the petitioner never remained absent from her duties. He admitted that as per the record no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an office order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 21.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed on 26/2/1997 by the respondent.

17. The mandays chart Ex. RW1/E clarifies that from the date of her initial engagement to August, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to August, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, she was without any work. While testifying in the Court as PW1, the petitioner has given her age as 52 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

24. Not pressed.

Relief (Issue No. 5)

25. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to August, 2003 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 369/2009

Date of Institution : 18.07.2009

Date of Decision : 20.06.2013

Shri Sohan Lal s/o Shri Mahant Ram, r/o Village Madwan, P.O. Bradta, Tehsil Sarkaghat, District Mandi, H.P. (Now dead), through his legal representatives:

- (i) Smt. Tara Devi w/o }
- (ii) Sh. Rakesh Kumar s/o }
- (iii) Smt. Beena Devi d/o } late Shri Sohan Lal . . . *Petitioner(s)*.
- (iv) Smt. Reena Devi d/o }
- (v) Miss Sunita d/o }

Versus

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . . *Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Sohan Lal S/O Shri Mahant Ram by the Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. At this stage, I will like to highlight that the workman Shri Sohan Lal expired on 13.5.2009 during the pendency of the matter before the appropriate Government. Accordingly, his legal heirs were brought on the record by this Court/Tribunal.

3. The case of the legal heirs of the deceased petitioner/workman (as set out in the statement of claim/demand) is that the services of Shri Sohan Lal (workman) were engaged by the respondent as a daily wager on muster roll basis in the year 1998. He worked continuously as such up-to 07.7.2005. On the next day i.e. 08.7.2005, his services were terminated by the respondent after giving three months notice pay and retrenchment compensation as per Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). At the time of the termination of the services of late Shri Sohan Lal, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. were retained in service by the respondent. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj

was appointed by the respondent in the year 2000. She is junior to the deceased petitioner. Her services were also disengaged by the respondent alongwith late Shri Sohan Lal w.e.f. 08.7.2005. The services of Smt. Mamta Devi have been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of the reengagement of Smt. Mamta Devi, an opportunity of re-employment was not afforded to the deceased petitioner. The retrenchment orders dated 02.7.2005 and 04.7.2005 whereby the services of the workmen were terminated by the respondent w.e.f. 08.7.2005 have already been set aside by this Court. More than 600 daily waged workers have been reinstated by the respondent/department. They have also been paid lump sum amount of Rs. 50,000/- each as wages/compensation. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioners have claimed the following relief(s) in this case:-

- “i) The Hon’ble Court may kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to pay compensation amounting Rs. 50000/- in the favour of claimants/legal heirs and other consequential service benefits throughout”.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioners. The petition suffers from the vice of delay and laches. The petitioners have not come to the Court with clean hands. They have suppressed the material facts from the Court. The petitioners are estopped from filing the claim petition by their act and conduct.

On merits, it has been owned that the services of late Sh. Sohan Lal were engaged as a daily wagger on the muster roll in the year 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the deceased petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the workman. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the deceased petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs. 50,000/- each have not been agitated. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

5. No rejoinder has been preferred by the petitioners.

6. Per order dated 27.8.2012, following issues were struck:-

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 wrongly and illegally as alleged? . . .OPP.

2. Whether the reference is not maintainable in the present form? . .OPR.
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? . .OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .OPR.
5. Whether the petitioner has suppressed the material facts from the Court as alleged. If so, its effect? . .OPR.
6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . .OPR.
7. Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Issue No. 6 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

9. Smt. Tara Devi the wife/one of the legal heirs of the deceased workman Shri Sohan Lal stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her husband. She denied that no person junior to late Shri Sohan Lal has been retained in service by the respondent and the services of the deceased workman were dispensed with in a rightful manner.

10. Ex. PW1/B is the mandays chart relating to Shri Shashi Kant s/o Shri Bihari Lal, a daily wager working under the respondent.

11. No evidence has been adduced by the respondent.

12. It is the admitted case of the parties that the services of late Shri Sohan Lal were engaged as a daily wager on the muster roll basis in the year 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the deceased petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act after issuing a notice. The termination notice was issued by the respondent pursuant to an order

dated 17.6.2005 passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

13. The respondent in his reply has admitted that the persons junior to late Shri Sohan Lal are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant. Browsing of Ex.PW1/B reveals that the services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of late Shri Sohan Lal. Shri Shashi Kant is junior to the deceased workman and his services were not terminated by the respondent alongwith late Shri Sohan Lal. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

14. There is no denial of the fact that a number of references/claim petitions against the Executive Engineer, HPPWD Division, Dharampur (respondent) have been decided by this Court. While deciding the references/claim petitions, it was held that one Smt. Mamta Devi was initially engaged by the respondent in the year 2000. She is/was junior to late Shri Sohan Lal, who was appointed in the year 1998. The services of Smt. Mamta Devi were also disengaged by the respondent alongwith late Shri Sohan Lal w.e.f. 08.7.2005 after issuing a notice. Smt. Mamta Devi was reengaged as a daily wager in the year 2008. At the time of her re-engagement, an opportunity of re-employment was not afforded to late Shri Sohan Lal. Therefore, it can be safely said that the respondent has flouted the provisions of Section 25-H of the Act. The termination of the services of the deceased workman (Shri Sohan Lal) is illegal and unjustified.

15. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs. 50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the legal representatives of deceased Shri Sohan Lal are also entitled to a sum of Rs. 50,000/-. No order regarding the reinstatement can be passed since the workman has already left the land of the dying.

16. This issue is decided in favour of the petitioners and against the respondent.

Issues No. 2,4,5 and 6.

17. Not pressed.

Issue No. 3

18. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable.

Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by

this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Taking into account the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches.

19. For entitlement to back wages on reinstatement of an employee, the initial burden lies upon him to show that he was not gainfully employed. Only thereafter, the employer is required to rebut the same. The petitioners have failed to discharge the initial onus that during the period of his forced idleness the deceased workman (Shri Sohan Lal) was not gainfully employed. For these reasons, they are not entitled to the back wages.

20. This issue is also decided in favour of the petitioners and against the respondent.

Relief (Issue No. 7)

21. As a sequel to my findings on the issues No.1 and 3 above, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of late Shri Sohan Lal (daily wager) is set aside and quashed. No orders regarding re-engagement are being passed since the workman has already expired. The respondent is directed to pay lump sum amount of Rs. 50,000/- to the petitioners in lieu of the back wages and compensation etc. Such amount will be shared by the petitioners equally. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of June, 2013

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT- CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 114/2012

Date of Institution : 06.1.2012

Date of Decision : 11.06.2013

Shri Virender Kumar s/o Shri Bholu Ram, r/o Village Dalana, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Virender Kumar S/O Shri Bholu Ram, Village Dalana, P.O. Balh Joli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during December, 1997 to Year, 2003, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 1997. He worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar. No appointment order/letter was issued in his name by the respondent. The latter used to engage his services for 15 to 20 days every month instead of the full month. Fictional breaks for 10-15 days each month were given by the respondent up-to the month of September, 2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. The respondent gave him the artificial breaks from February, 1997 to 30.09.2007. The persons who were working with him (petitioner) or joined the service after him were not given any intentional break by the respondent. At the time of giving the artificial/fictional breaks, the principle of ‘last come first go’ was not followed by the respondent. The persons junior to him namely Shri Rajinder Singh and Sh. Sumer Singh etc. worked with the respondent/department without any break. The period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of his (petitioner’s) services. The persons junior to him have been regularized by the respondent earlier to him against the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011. He (petitioner) completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006. As per the policy framed/approved in Mool Raj Upadhaya’s case, he is entitled to the regularization of his services as work-charge beldar w.e.f. 1st January, 2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. He is still working with the respondent/department. The act and conduct of the respondent amounts to unfair labour practice. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“(i) The Hon’ble Court kindly be set aside the illegal period of breaks from February, 1997 to 30.09.2007 and directed to respondent to pay the wages of the applicant in breaks periods and counted the said period in continuity of services for the purpose of his regularization.

- (ii) The Hon'ble Court again directed to respondent to granted the work charge status to the applicant after completion of 10 years i.e. 01.01.2007 in the pay scale of rupees 4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon'ble Court further directed to respondent to fix the applicant in beldar seniority list of work charges/regular above to the junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the petition. They have not been arrayed as parties/respondents because of which the petition is bad for non-joinder of the necessary parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on muster roll basis in the month of February, 1997. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004. After the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. No fictional breaks were granted to the petitioner at any point of time. The services of the petitioner were engaged as per the requirement of the work and availability of the funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time he was duly made aware regarding the availability of the work. Continuous work for the entire month was provided to the petitioner. He used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner worked in continuity. Their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is not applicable to the case of the petitioner. As per Mool Raj Upadhaya's case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. The services of the petitioner were rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 09.10.2012, following issues were framed:

- 1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the month of December, 1997 to the year, 2003 is illegal and unjustified as alleged? . . .OPP.
- 2. Whether the petition is not maintainable in the present form? . . .OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . . OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . . OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

8. Shri Virender Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that as and when the muster roll was issued in his name, he was duly made aware that because of nonavailability of the budget, the work for 10-20 days is being provided to him. He denied that he has instituted a phoney petition.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the labourers whose names find mention in Ex. RW1/F were employed after the engagement of the services of the petitioner and completed 240 days of work earlier to him. He denied that the petitioner never remained absent from his duties. He admitted that as per the record, no notice regarding willful absence from duty was ever served upon the petitioner.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. Vide this notification, National Highway Division was restructured and a new HPPWD Division was created at Joginder Nagar.

11. Ex. RW1/B is the copy of an office order. It depicts that the newly created office of the respondent started functioning w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the copy of an office order dated 18.8.2012 issued by the respondent. It reveals that the petitioner was offered temporary post of beldar subject to certain terms and conditions with prospective effect.

13. Ex. RW1/D is the copy of joining report dated 21.8.2012 submitted by the petitioner in obedience to the office order dated 18.8.2012 (Ex. RW1/C).

14. Ex. RW1/E is the mandays chart relating to the petitioner.

15. Ex. RW1/F is the mandays chart/year-wise working days details in respect of Shri Rajinder Singh and 10 other daily wagers working under the respondent.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis. The mandays chart Ex. RW1/E unfolds that the petitioner was initially employed in the month of February, 1997 by the respondent.

17. The mandays chart Ex. RW1/E clarifies that from the date of his initial engagement to December, 2003 work for the entire month/year was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non-availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/F) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent unfolds that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

18. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of December, 1997 to December, 2003 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

19. In the petition, the petitioner has nowhere pleaded that during the break period, he was without any work. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

20. This issue is decided in favour of the petitioner and against the respondent.

Issue No. 2

21. Not pressed.

Issue No. 3

22. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were 477 working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar. Due to these reasons, National Highway Division, Joginder Nagar is not a necessary party to the petition.

23. This issue is also decided in favour of the petitioner and against the respondent.

Issue No. 4

24. Not pressed.

Relief (Issue No. 5)

25. As a sequel to my findings on issue No. 1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to December, 2003 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of December, 1997 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of June, 2013.

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 347/2012

Shri Omkar Singh s/o Shri Mangat Ram, r/o Village Draman, P.O.Golwan, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

03-07-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D. D. A. for the respondent.

No PW is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not come to the Court today despite intimation. This indicates that the petitioner is not interested to pursue the matter. The perusal of the file discloses that till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses by the petitioner. As already mentioned, third and last opportunity was afforded to the petitioner for today

for leading the evidence which he has failed to do. In these circumstances, I am not inclined to grant the petitioner more time for leading the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, I have no hesitation to conclude that he is not entitled to any relief. The claim petition preferred by him is dismissed for want of evidence. No fictional breaks were given to the petitioner by the respondent from time to time as alleged. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced :

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 380/2012

Shri Nanak Chand s/o Sh. Hari Singh, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

03-07-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D. D. A. for the respondent.

No PW is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not come to the Court today despite intimation. This indicates that the petitioner is not interested to pursue the matter. The perusal of the file discloses that till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses by the petitioner.

As already mentioned, third and last opportunity was afforded to the petitioner for today for leading the evidence which he has failed to do. In these circumstances, I am not inclined to grant the petitioner more time for leading the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, I have no hesitation to conclude that he is not entitled to any relief. The claim petition preferred by him is

dismissed for want of evidence. No fictional breaks were given to the petitioner by the respondent from time to time as alleged. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (Camp at Mandi)**

Ref. No. : 203/2012

Shri Yadvinder Kumar, President, Himachal Gun Workers Union (Regd. No.-31) affiliated to BMS, H.No. 330/5, Sain Mohalla, Mandi, Distt. Mandi, H.P. & other 13 workers . . . *Petitioner.*

Versus

Sh. L.V. Sharma, M/s Cousins Gun Manufacturers Samkhetar Bazar, Mandi, Distt. Mandi, H.P. . . . *Respondent.*

10-07-2013 Present : Sh. Yadvinder Kumar, President of the Workers' Union with
Sh. K. S. Guleria, Adv. for the petitioner.
Sh. L. V. Sharma respondent with Sh. M.K. Pandit, Adv.

The parties have compromised. Compromise Deed Ex. CX placed on the record. Joint statement of the parties recorded separately.

2. The claim petition is disposed of as compromised in terms of Ex. CX. The same and Ex. A-1 will form part of the Award. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Records.

Announced:

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P
(Camp at Mandi)

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 221/2012

Sh. Sher Singh s/o Shri Roshan Lal, r/o Village Dhoran, P.O. Darang, Tehsil Palampur,
Distt. Kangra, H.P. . . *Petitioner.*

Versus

The Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, Distt. Kangra,
H.P. . . *Respondent.*

29-07-2013 Present : Sh. Vijay Kaundal, Adv., csl. for the petitioner.
Sh. S. K. Sharma, Adv., csl. for the respondent.

Reply to the application under Section 151 C.P.C. not filed by the petitioner/non-applicant.
His ld. csl. has made the below given statement in the Court today:-

“ Since my client Sh. Sher Singh has rejoined the duty on 08-05-2013, I do not want to
proceed with this reference/claim petition. It be dismissed as withdrawn.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further
necessary action at its end.
5. Be consigned to the Records after due completion.

Announced :

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 332/2012

Smt. Bhadri Devi w/o Shri Fithku Ram, r/o Village and P.O. Makriri, Tehsil Joginder
Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P.
. . *Respondent.*

12-06-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D. D. A. for the respondent.

No. PW (including the petitioner) is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not turned up despite intimation. This indicates that she is not interested to pursue the matter. Otherwise too, as already mentioned three opportunities have been granted to the petitioner to lead the evidence which she has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time for adducing the evidence. Her evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to lead any evidence in support of her claim, I have no hesitation to say that she is not entitled to any relief. The claim petition preferred by her is dismissed for want of evidence. The termination of her services/giving breaks in service to the petitioner by the respondent from time to time (as per the Reference) is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced :

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref : No. : 324/2012

Smt. Parvati Devi w/o Shri Amar Nath, r/o Village Laharana, P.O. Panjalag, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

12-06-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D.D.A. for the respondent.

No PW (including the petitioner) is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not turned up despite intimation. This indicates that she is not interested to pursue the matter. Otherwise too, as already mentioned three opportunities have been granted to the petitioner to lead the evidence which she has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time for adducing the evidence. Her evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to lead any evidence in support of her claim, I have no hesitation to say that she is not entitled to any relief. The claim petition preferred by her is dismissed for want of evidence. The termination of her services/giving breaks in service to the petitioner by the respondent from time to time (as per the Reference) is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref : No. : 322/2012

Smt. Nanki Devi w/o Shri Arjun Singh, r/o Village Dhelu Har, P.O. Dohag, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

12-06-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D.D.A. for the respondent.

No PW (including the petitioner) is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not turned up despite intimation. This indicates that she is not interested to pursue the matter. Otherwise too, as already mentioned three opportunities have been granted to the petitioner to lead the evidence which she has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time for adducing the evidence. Her evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to lead any evidence in support of her claim, I have no hesitation to say that she is not entitled to any relief. The claim petition preferred by her is dismissed for want of evidence. The termination of her services/giving breaks in service to the petitioner by the respondent from time to time (as per the Reference) is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 343/2012

Sh. Diwan Chand s/o Shri Mangat Ram, r/o Village Langha, P.O. Drahal, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

12-06-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D. D. A. for the respondent.

No PW (including the petitioner) is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not turned up despite intimation. This indicates that he is not interested to pursue the matter. Otherwise too, as already mentioned three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time for adducing the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to lead any evidence in support of his claim, I have no hesitation to say that he is not entitled to any relief. The claim petition preferred by him is dismissed for want of evidence. The termination of his services/giving breaks in service to the petitioner by the respondent from time to time (as per the Reference) is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 373/2012

Sh. Pyar Chand s/o Shri Sher Singh, r/o Village Hard, P.O. Ropri Kelehru, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, Distt. Mandi, H.P. . . *Respondent.*

12-06-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D.D.A. for the respondent.

No PW (including the petitioner) is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not turned up despite intimation. This indicates that he is not interested to pursue the matter. Otherwise too, as already mentioned three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time for adducing the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to lead any evidence in support of his claim, I have no hesitation to say that he is not entitled to any relief. The claim petition preferred by him is dismissed for want of evidence. The termination of his services/giving breaks in service to the petitioner by the respondent from time to time (as per the Reference) is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 368/2012

Sh. Gian Chand s/o Shri Gulab Singh, r/o Village Sanahli, P.O. Tulah, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

. . Respondent.

12-06-2013 Present : Sh. Suresh Kumar Sharma, Adv., csl. for the petitioner.
Sh. Sanjeev Katoch, D. D. A. for the respondent.

No PW (including the petitioner) is present despite the grant of third and last opportunity. Ld. csl. for the petitioner states at bar that his client has not turned up despite intimation. This indicates that he is not interested to pursue the matter. Otherwise too, as already mentioned three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the witnesses. In these circumstances, I am not inclined to grant the petitioner more time for adducing the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to lead any evidence in support of his claim, I have no hesitation to say that he is not entitled to any relief. The claim petition preferred by him is dismissed for want of evidence. The termination of his services/giving breaks in service to the petitioner by the respondent from time to time (as per the Reference) is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 279/2012

Km. Rano Devi d/o Shri Mukhtiar Singh, r/o Village and P.O. Nangaran, Tehsil Nangal,
District Ropar (Punjab) . . Petitioner.

Versus

The Managing Director, M/s Addinath Rubbers Private Limited, Industrial Area, Tahliwal,
Tehsil Haroli, District Una, H.P. . . Respondent.

29-06-2013 Present : Sh. R. K. Singh Parmar, A.R. for the petitioner.
Sh. Kamaljeet Singh, Personnel Officer for the respondent with
Sh. R. K. Bhardwaj, Adv.

The case is listed for final arguments today, but the parties have compromised. Statements recorded separately.

2. Sh. Kamaljeet Singh, Personnel Officer for the respondent has made the below given statement in the Court:-

“The matter has been compromised. As per the compromise, the petitioner/workman will be reinstated in service at the same post on which he/she was working earlier. The petitioner can join the duty in the factory premises on or before 06-07-2013 after submitting the joining report in writing. The petitioner shall be entitled to the seniority and continuity in service from the date of termination i.e. 10-07-2010. We will also pay a total sum of Rupees 25,000/- (twenty five thousand) to the petitioner in lieu of the back wages, compensation and litigation cost. Such amount will be paid to the claimant/petitioner by way of a Demand Draft on or before 31-7-2013. The claim petition may be allowed in the aforesaid terms. The retrenchment in question be set-aside.”

3. Ld. A.R. for the petitioner has recorded his satisfaction to the above quoted statement.

4. Taking into account the above noted facts, the instant claim petition is allowed in the aforesaid terms having been compromised. Parties to bear their own costs.

5. The reference is answered accordingly.

6. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

7. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 70/2012

Shri Rohit Kumar s/o Shri Jagtar Singh, r/o Village and P.O. Duleher, Tehsil Haroli, District Una, H.P. . . *Petitioner.*

Versus

The Managing Director, M/s Addinath Rubbers Private Limited, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P. . . *Respondent.*

29-06-2013 Present : Sh. R.K. Singh Parmar, A.R. for the petitioner.
Sh. Kamaljeet Singh, Personnel Officer for the respondent with
Sh. R.K. Bhardwaj, Adv.

The case is listed for final arguments today, but the parties have compromised. Statements recorded separately.

2. Sh. Kamaljeet Singh, Personnel Officer for the respondent has made the below given statement in the Court :-

“The matter has been compromised. As per the compromise, the petitioner/workman will be reinstated in service at the same post on which he/she was working earlier. The petitioner can join the duty in the factory premises on or before 06-07-2013 after submitting the joining report in writing. The petitioner shall be entitled to the seniority and continuity in service from the date of termination i.e. 10-07-2010. We will also pay a total sum of Rupees 25,000/- (twenty five thousand) to the petitioner in lieu of the back wages, compensation and litigation cost. Such amount will be paid to the claimant/petitioner by way of a Demand Draft on or before 31-7-2013. The claim petition may be allowed in the aforesaid terms. The retrenchment in question be set-aside.”

3. Ld. A.R. for the petitioner has recorded his satisfaction to the above quoted statement.

4. Taking into account the above noted facts, the instant claim petition is allowed in the aforesaid terms having been compromised. Parties to bear their own costs.

5. The reference is answered accordingly.

6. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

7. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,
*Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 71/2012

Shri Karnail Singh s/o Shri Ranjeet Singh, r/o Village Majra-Jhola, P.O. Polian, Tehsil Haroli, District Una, H.P. . . *Petitioner.*

Versus

The Managing Director, M/s Addinath Rubbers Private Limited, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P. . . *Respondent.*

29-06-2013 Present : Sh. R. K. Singh Parmar, A. R. for the petitioner.
Sh. Kamaljeet Singh, Personnel Officer for the respondent with
Sh. R. K. Bhardwaj, Adv.

The case is listed for final arguments today, but the parties have compromised. Statements recorded separately.

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Announced:

RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-
Industrial Tribunal,
Dharamshala, H.P

ब अदालत उप-मण्डलाधिकारी (ना0), नालागढ़, जिला सोलन, हिमाचल प्रदेश

श्री सोहन लाल पुत्र श्री जय देव, निवासी ग्राम सलैहड़ा, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश

बनाम

आम जनता

दावा अन्तर्गत धारा 8 (3) विवाह पंजीकरण अधिनियम, 1996.

इशतहार बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में श्री सोहन लाल पुत्र श्री जय देव, निवासी ग्राम सलैहड़ा, तहसील नालागढ़, जिला सोलन (हि0 प्र0) ने प्रार्थना-पत्र दिया है कि उसकी शादी दिनांक 28-3-2010 को श्रीमती पूजा पुत्री श्री राम स्वरूप पत्नी श्री सोहन लाल, नि0 ग्राम पंचायत सलैहड़ा, तहसील नालागढ़ के साथ हुई है परन्तु प्रार्थी अपनी इस शादी का इन्द्राज कार्यालय ग्राम पंचायत बारियां, तहसील नालागढ़ में दर्ज नहीं करवा सका है।

अतः आम जनता को सूचित किया जाता है कि श्री सोहन लाल पुत्र श्री जय देव, निवासी ग्राम सलैहड़ा, तहसील नालागढ़ व श्रीमती पूजा देवी पुत्री श्री राम स्वरूप पत्नी श्री सोहन लाल, नि० ग्राम पंचायत सलैहड़ा, तहसील नालागढ़ की शादी कार्यालय ग्राम पंचायत बारियां, तहसील नालागढ़, जिला सोलन (हि० प्र०) में दर्ज करवाने हेतु किसी को कोई एतराज हो तो वह दिनांक 20-9-2013 को इस कार्यालय में उपस्थित आकर एतराज प्रस्तुत कर सकता है अन्यथा दिनांक 20-9-2013 को उक्त शादी के पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जाएगी।

आज दिनांक 26-8-2013 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-
उप-मण्डलाधिकारी (ना०),
नालागढ़, जिला सोलन, हिमाचल प्रदेश।

Before the Sub-Divisional Magistrate, Solan, District Solan, Himachal Pradesh

In the matter of :

Smt. Mohinder Kaur w/o Shri Manmohan Singh, r/o Village Shak, Post Office Haripur,
Tehsil and District Solan, Himachal Pradesh . . Applicant.

Versus

General public

. . Respondent.

Whereas applicant Smt. Mohinder Kaur w/o Shri Manmohan Singh, r/o Village Shak, Post Office Haripur, Tehsil and District Solan, Himachal Pradesh has submitted an application before the undersigned for the correction of her name in the birth record of Gram Panchayat Haripur, as her name has entered in G.P. Haripur record as Babli, which is wrong.

The general public of the concerned area is hereby called upon to file objection, if any, regarding correction of name of above Smt. Mohinder Kaur in the record of Gram Panchayat Haripur in writing to this office. The objections should reach this office on or before 16-9-2013 positively, otherwise necessary order will be passed to correct her name in the concerned office.

Seal.

Sd/-
Sub-Divisional Magistrate,
Solan, District Solan (H. P.).